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JP-1

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Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38^e législature

Official Report of Debates (Hansard)

Wednesday 23 June 2004

Journal des débats (Hansard)

Mercredi 23 juin 2004

Standing committee on
justice policy

Organization

Comité permanent
de la justice

Organisation

Chair: David Oraziotti
Clerk: Katch Koch

Président : David Oraziotti
Greffière : Katch Koch



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 23 June 2004

Mercredi 23 juin 2004

The committee met at 1005 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Mr Katch Koch): Good morning, honourable members. Welcome to the inaugural meeting of the standing committee on justice policy. It is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Ernie Hardeman (Oxford): Based on the fact that I don't have time for a long campaign for this position, I would like to nominate David Oraziotti.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr Oraziotti elected Chair of the committee.

Mr Hardeman: Mr Chairman, I'd like to point out that the campaign for the Chair can continue after the election, for all the gratuities that we would be looking for.

The Chair (Mr David Oraziotti): Thank you, Mr Hardeman.

ELECTION OF VICE-CHAIR

The Chair: Members, it's my duty to call upon you to elect a Vice-Chair. Are there any nominations?

Mr Michael A. Brown (Algoma-Manitoulin): I would like to nominate Bob Delaney.

The Chair: Any further nominations? Seeing none, there being no further nominations, I declare nominations closed and Mr Delaney elected Vice-Chair of the committee.

APPOINTMENT OF SUBCOMMITTEE

The Chair: If we can just move to item number 3 on the agenda, it's the appointment of the subcommittee on committee business. A motion for the subcommittee?

Mr Phil McNeely (Ottawa-Orléans): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or on the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Oraziotti as Chair; Mr Brown, Mr Klees and Mr Kormos; and that substitution be permitted on subcommittee.

The Chair:

All those in favour? Opposed? Carried.

Is there any other business at this time? A motion to adjourn? Thank you. We're adjourned.

The committee adjourned at 1008.

CONTENTS

Wednesday 23 June 2004

Election of Chair	JP-1
Election of Vice-Chair	JP-1
Appointment of subcommittee	JP-1

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr David Oraziatti (Sault Ste Marie L)

Vice-Chair / Vice-Président

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Michael A. Brown (Algoma-Manitoulin L)

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh L)

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Kevin Daniel Flynn (Oakville L)

Mr Tim Hudak (Erie-Lincoln PC)

Mr Frank Klees (Oak Ridges PC)

Mr Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr David Oraziatti (Sault Ste Marie L)

Mr Mario G. Racco (Thornhill L)

Substitutions / Membres remplaçants

Mr Ernie Hardeman (Oxford PC)

Mr Phil McNeely (Ottawa-Orléans L)

Clerk / Greffier

Mr Katch Koch

Staff / Personnel

Ms Susan Swift, research officer, Research and Information Services



JP-2

JP-2

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Tuesday 3 August 2004

Journal des débats (Hansard)

Mardi 3 août 2004

**Standing committee on
justice policy**

**Comité permanent
de la justice**

**Emergency Management
Statutes Review**

**Examen des lois ontariennes
sur les mesures d'urgence**



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 3 August 2004

Mardi 3 août 2004

The committee met at 1305 in room 151.

The Clerk of the Committee (Mr Katch Koch): Good afternoon, honourable members. It is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Mrs Liz Sandals (Guelph-Wellington): I'd like to nominate Mike Colle as Acting Chair.

The Clerk of the Committee: Are there any other nominations?

Mr Peter Kormos (Niagara Centre): I'd like to nominate David Zimmer as Acting Chair.

Mr David Zimmer (Willowdale): Thank you very much, but I've got far too much on my plate this summer to serve as the Chair.

Mr Tim Hudak (Erie-Lincoln): If Mr Zimmer declines, I'd like to nominate Ms Sandals as Chair.

Mrs Sandals: I would also decline. I think Mr Colle would do an excellent job.

Mr Kormos: I don't want anybody to be left with the impression that the fix is in, that somehow these things are predetermined. I wish to nominate Vic Dhillon, an outstanding member of the Legislature—feel free to use that in your householder—as Chair of this committee.

Mr Vic Dhillon (Brampton West-Mississauga): I decline as well.

Mr Hudak: Maybe we'll have better luck at the other end of the row. I nominate Mr Arthurs as Chair of the committee.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): I respectfully decline.

Mr Kormos: I nominate Tim Hudak. Is that in order?

The Clerk of the Committee: I have to say that's not in order because, as determined by Votes and Proceedings dated June 17 with respect to committee memberships, this committee was to be chaired by a government member.

Mr Kormos: But Mr Hudak is a former government member, and the policy hasn't changed that much.

The Clerk of the Committee: Unfortunately, it has to come from the government bench.

Mr Kormos: I understand. So if Mr Hudak were to nominate me, that wouldn't be in order either.

The Clerk of the Committee: That's correct.

Mr Kormos: So we're forced into a position where—
Interjection.

Mr Kormos: Ms Broten, please, I want to see democracy in action here. I want to see the democratic process

prevail. I want people to have a secret ballot. I want there to be true selection of a Chair. I nominate Laurel C. Broten.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Thank you, Mr Kormos. I don't accept.

Mr Kormos: Is it because it's me? Perhaps you should try nominating her.

Mr Hudak: I'll give it a shot. I'm similarly, as is Mr Kormos, a fan of Ms Broten. I think she'd make an excellent Chair of the committee. I nominate Ms Broten.

Mr Kormos: You could put that in your householder.

Ms Broten: I appreciate your confidence, Mr Hudak.
[Inaudible]

Mr Kormos: Chair, I caution people: We got a Speaker by acclamation, and look what happened. We should be very careful about this.

The Clerk of the Committee: Right now we have one nomination on the floor: Mr Colle as Acting Chair.
1310

Mr Hudak: Mr Clerk, they have to accept to be nominated. They have to be accepted to be on the ballot.

The Clerk of the Committee: That's right.

There being no further nominations, I declare the nominations closed and Mr Colle elected Acting Chair of the committee.

The Acting Chair (Mr Mike Colle): First, I want to thank the committee members for giving me the opportunity to serve as Chair. Hopefully we can achieve some good results for the people of Ontario.

Mr Kormos: On a point of order, Mr Chair: What's an Acting Chair, as compared to a Chair? I don't see anything in the standing orders about Acting Chairs. Am I simply not reading them properly?

The Acting Chair: I guess it's normal, if a committee so wishes, that if the Chair and Vice-Chair are not present, the committee can designate another member of the Legislature to act as Chair to preside over the committee hearings.

Mr Kormos: So that means there's a Chair of the committee currently. The Chair hasn't been displaced. The Chair is Oraziotti?

The Acting Chair: No, he's basically been subbed in for, on an interim basis.

Mr Kormos: So he's no longer the Chair?

The Acting Chair: He's still the Chair, but at this present time, there is an Acting Chair. He is still the

ongoing permanent Chair, except for the proceedings that we are about to undertake.

Mr Kormos: So now there are two paid Chairs of the committee.

The Acting Chair: No, there are not. There is just one Chair who's permanent. I am acting as Chair for the interim.

Mr Kormos: The Vice-Chair of the committee is who?

The Clerk of the Committee: Mr Bob Delaney.

Mr Kormos: He's not here, I understand, but this is very interesting.

The Acting Chair: We should begin the committee meeting here.

SUBCOMMITTEE REPORTS

The Acting Chair: The item before us is the report of the subcommittee. As you know, the subcommittee met July 23. Is there anybody who would like to move the report of the subcommittee? Mr Zimmer? OK, you have to read into the record all the details of the subcommittee report. There are two reports. The one is on page 1. Could you begin, Mr Zimmer, by reading the report of the subcommittee as of July 23 into the record?

Mr Zimmer: Your subcommittee on committee business met on Friday, July 23, 2004, and recommends the following with respect to the review and report on the adequacy of Ontario's emergency management statutes:

(1) That the research officer provide a list of potential expert witnesses to members of the subcommittee by Tuesday, July 27, 2004;

(2) That the committee utilize teleconferencing and videoconferencing technologies where possible;

(3) That the research officer provide an executive summary of the report by the Senate committee on national security and defence entitled *National Emergencies: Canada's Fragile Front Lines* (dated March 2004), to members of the subcommittee;

(4) That the subcommittee meet on Tuesday, July 27, 2004.

I move that.

Mr Kormos: Recorded vote.

Ayes

Arthurs, Broten, Dhillon, Hudak, Sandals, Zimmer.

The Acting Chair: Opposed? Carried.

Mr Zimmer, would you continue with the subcommittee report of July 27, 2004?

Mr Zimmer: Your subcommittee on committee business met on Tuesday, July 27, 2004, and recommends the following with respect to the review and report on the adequacy of Ontario's emergency management statutes:

(1) That an advertisement of the committee's hearings be posted on the Ontario parliamentary channel and on the Internet;

(2) That the Commissioner of Public Safety and Security or his designate be invited to provide a technical briefing to the committee in the afternoon of August 3, 2004;

(3) That the following ministries be invited to provide a 20-minute briefing to the committee and be scheduled according to their availability on August 4 and August 5, 2004:

(a) Ministry of Community Safety and Correctional Services

(b) Management Board of Cabinet

(c) Ministry of Municipal Affairs

(d) Ministry of Natural Resources

(e) Ministry of Health and Long-Term Care

(f) Ministry of the Attorney General

(g) Ministry of the Environment

(h) Ministry of Agriculture and Food

(i) Ministry of Labour;

(4) That invitations be sent to the expert witnesses identified by legislative research in their document dated July 27, 2004, to participate as members of theme-based panels on August 16, 17, 18 and 19, 2004;

(5) That the clerk of the committee and legislative research, in consultation with the Chair, be authorized to identify the panels, to cluster and to schedule the expert witnesses accordingly;

(6) That the clerk of the committee compile and provide to the subcommittee a list of witnesses who requested to appear before the committee;

(7) That the Chair of the committee be authorized to reimburse reasonable expenses incurred by invited witnesses on an ad hoc basis;

(8) That legislative counsel be present at public hearings;

(9) That the research officer provide the committee with a summary of testimonies;

(10) That August 23, 24, 25 and 26, 2004, be reserved for travel, as authorized by the committee;

(11) That the deadline for written submissions be August 26, 2004, at 5 pm;

(12) That one issue binder be provided for each caucus;

(13) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

So moved.

The Acting Chair: Moved by Mr Zimmer, acceptance of the report of the subcommittee of July 27. All in favour?

Mr Kormos: One moment. Debate?

The Acting Chair: OK, comments?

Mr Kormos: Very briefly, first, I want to thank the clerk and legislative research for the preparation of the material and giving it to my office. I appreciate the problems you had. I'm disappointed that there will only be one copy of that material for the whole Liberal caucus, whereas in my case I have a copy all to myself, which

means I'll read it. I think it's going to be difficult for four, as it is now, Liberal caucus members to have to read from the same book. So be it.

I understand that the letter from Dr Young to the Premier provoked, or at least was the rationalization for, the commencement of this initiative. It's interesting that the government was leaking that out to the press at the same time as the opposition was leaking it out to the press, each with different interests and motives being served. They almost collided with each other as people were running around from the government caucus office and the opposition caucuses' offices, giving this to the press gallery, trying to get their spin on it first. The government was a little later, so it missed out, quite frankly. You've got to get there first; it's the early-bird maxim.

1320

Having said that, my concern—and I have every regard for the people who participated in the subcommittee meeting—is that we're starting—and it has not been articulated; I'm saying this. We're starting, presumably, with Dr Young's letter. We're dealing with the inherent jurisdiction of the committee to review legislation. That's one of the jobs of this committee. As you know, the government wanted to strike a select committee with yet another Chair and another Vice-Chair and an agenda all of its own. It's one thing that the New Democrats had no patience for.

My concern is that this is an incredibly broad topic; incredibly broad. It's being approached with the enthusiasm with which a first-year university student does his or her first essay, but it also has the same sort of self-indulgent excesses that first-year university students tend to have when writing essays, or sometimes second-, third- and fourth-year university students. It's like the English major who is going to write the successor to something written by Tolstoy or Dostoevsky without ever actually having read either. My concern is the incredibly broad range of this, that it doesn't have focus, and that the committee has a relatively compact period of time in which to receive submissions and then, presumably, to consider them with the grandiose opus goal of writing legislation. I find that of great concern.

Those of you who have been in cabinet, like Mr Hudak and Mr Colle, will know that legislation does not get written—well, sometimes it does, and that's the problem; sometimes legislation does get written on the back of an envelope or in the back of the leader's tour bus. But it's a very dangerous exercise, because what you're doing is purporting to examine the whole world when you've examined but a fraction of a municipality or a neighbourhood. So I'm concerned about the time frames. It seems to me that if it's going to be as unboundaried and unfocused as it appears to be, the time frames are far too limited.

The converse of that is that I'm concerned about the lack of focus. The cart is being put before the horse, in my view very much so, when you talk about, "We're going to examine the appropriateness," or the capacity or the quality or the validity or what have you, "of the

existing legislation." One of the first exercises we've got to do is to find out what legislation we're talking about, because, quite frankly, we could be talking about legislation affecting firefighters, legislation affecting police services. We could talk about the Criminal Code. We could talk about federal jurisdictions, and indeed much reference has been made to work done by a thoroughly unelected body, an undemocratic body, a Senate committee, for which I have little time or use. These people are parasites who have no business developing public policy. They're unelected and they are just an incredible weight on the taxpayers. But we've already begun to incorporate those.

I'm just expressing my concerns. I'm here. The majority of the committee clearly is the Liberal caucus. Let's make no bones about it: If there is legislation, it will be legislation that comes from this committee only after it has been approved by the Premier's office, by the mandarins and the politburo of the day. Let's not be under any illusions here. That's fine by me, just as long as we're not under any illusions. If it's to the government's purpose for legislation to flow from committee, legislation will flow; if it's not, then it won't. End of story. I'm loath to participate in constructing that legislation, or even appearing to, because I intend to criticize the daylights out of it once it's presented, unless of course it is perfect legislation and legislation that reflects valid policies. Having said that, I would just shake my head, I think.

Public safety and security: Where are the 1,000 cops that were promised? I've talked to cops out there. I had occasion to talk to a whole lot of them around Niagara region this last week and weekend. They haven't seen any impact in terms of the 1,000 new police officers. I've talked to firefighters in the sorts of municipalities that Hudak and I come from. Firefighting services are struggling. Paramedics and health care services are struggling. It seems to me we could be much more focused and produce some policy direction that would have much more impact much more quickly simply by propping up our policing, firefighting and front-line health care services. So I await to see what the government has in store for us. Thank you kindly.

The Acting Chair: Any other questions or comments?

Ms Broten: I want to respond, if I might, to some of Mr Kormos's concerns. As members of the subcommittee, Mr Kormos, I and you, Mr Chair, along with Mr Dunlop, have had an opportunity to discuss the broad nature of what we're examining. I think it's important to note, although the subcommittee report does not have every detail of those discussions, that there certainly was a breadth of examination in terms of a review of the statutes. That's what we're going to be undertaking today, a discussion with front-line people, and that's something we talked about early on. It is my hope, as we discussed at the subcommittee level and I think will flow through in the days to come, that we will be able to have an open discussion about the issues that face our province

on this most important issue, have a dialogue and a debate on where the right balance will fall and have that openly among all of us who have come here to do that job, who have been elected to serve the people of this province and who have come to do this work.

I hope you didn't make a determination, Mr Kormos; that you're prepared to work with us on this legislation, as all of us are going to be doing. Absolutely there will be every opportunity to be critical of legislation, because if we're all critical of it, we will do a better job in drafting that legislation. We will have committee hearings, as the normal course goes, later on in the process; there is no doubt about that. But as you said, we do have a lot of work to do.

I think the subcommittee report reflects where we are today, and with the good work of leg research and counsel, who have assisted us in preparing this first week, we have a lot to absorb, but I have every confidence that those people sitting around this table will be able to do that, with the help of those we are bringing in to serve as witnesses before us over the next two to three weeks.

Mr Hudak: I appreciate the comments of my colleagues Mr Kormos and Ms Broten, and on behalf of the Conservative caucus I'd just say that Mr Dunlop and I look forward to participating in this committee process. We certainly have tremendous respect for Dr James Young. We enjoyed working with him and have great admiration for the work he has done and continues to do in his position. So we look forward to his proposals before the committee today.

To emphasize, as did Mr Kormos, a couple of points: We hope through this committee process we will hear in fact about those 1,000 police officers who were promised during the election campaign and whom we have seen no sign of in the province, and who I think were omitted from the Ontario budget, if memory serves. Firefighters are another. The government went through an embarrassing scene a month or so ago with respect to a program to bring forward the sex offender registry, I believe, with the Toronto police. I hope it's not a harbinger for things to come with respect to the government's approach to security. I hope early on we will have some reassurances that these things will be corrected and we'll see that investment in law and security in Ontario.

One thing too that I think is important, particularly coming from a border area: There was a time when Ontario led other provinces, and led the federal Liberal government by the nose in many senses, in strengthening border security and strengthening our relationship with the Americans to ensure joint border initiatives. I'm not sure how much we'll get to as part of this; I expect we will. But having seen the orange alert happening currently at the border and the impact that has on our economy, some initiatives that we had proposed a year or two ago to help develop a strong and secure border at the same time as trying to facilitate trade and tourism to minimize the impacts on cross-border traffic should, I hope, be

under consideration by this committee and then hopefully implemented in the very near future.

I think we need to press very strongly, as a province, for a great deal of co-operation between our federal government and the national government of the United States of America for joint border initiatives. In fact, one thing considered for some time was a security perimeter across North America. If the French and the Germans were trying to rub each other out 60 years ago and now have a free and open border, surely we can press along and make similar arrangements with our counterparts in the United States. We always boast that it's the world's longest undefended border. Well, the fact of the matter is, it's becoming a fortress. It's becoming increasingly difficult for Canadians, landed immigrants in Canada and those who trade with the States to access that market. If we can work with the Americans to elevate our security in North America as a whole, I think that will be an enviable cause for our country, and hopefully Ontario will take a strong position in pressing for that.

1330

Those are some opening comments on behalf of Mr Dunlop and myself and the Conservative caucus. Of course, Mr Dunlop was a participant in the points that the subcommittee has brought forward.

I think we need a bit of caution on the travel. I think we had brought forward the point that we hoped the committee would bring members to the committee as opposed to flying the committee to other jurisdictions, where at all possible, to reduce expenses to the taxpayers of Ontario. But we're satisfied with the minutes of the committee and look forward to Dr Young's proposals to us.

The Acting Chair: If I may, just to be clear here: As directed by the Legislature, this committee will "be authorized to adopt the text of a draft bill on the subject matter of this order of reference"—the order of reference is to review and report on the adequacy of Ontario's emergency management statutes—"and where the text of the draft bill is adopted by the committee, it shall be an instruction to the Chair to introduce such bill in his or her name, as the primary sponsor. The other committee members who support the bill may have their names printed on the face of the bill as secondary sponsors."

So essentially we are charged with the task of reviewing the adequacy of Ontario's emergency management statutes to make sure that if there are future emergencies like we've had in recent years, such as the ice storm, the blackout of last year, the SARS situation we went through, in which Dr Young played a vital leadership role, or, as Mr Hudak said, what is transpiring for our neighbours to the south—I, as committee Chair, feel we owe it to the people of Ontario to ensure that there is preparedness, that our government ministries have all the tools available and are working in a co-operative fashion to ensure that if, God forbid, there is another outbreak of infectious disease or some weather calamity like the ice storm or whatever may happen, we as legislators have gone through our government offices and ministries to

ensure they have what is required to stand by the people of Ontario if they happen to be victimized by an act of weather or a medical catastrophe, and that we don't essentially—I think as reported by the SARS investigation, the quote was, “We built the boat while at sea in the middle of a storm.” That's no time to build the boat.

Hopefully we can help use the resources of this great province to ensure there are adequate measures in place so that we can provide safety and security in those incredibly hazardous times of natural catastrophes which unfortunately, whether it be next year or, God forbid, 20 or 30 years from now, will return to Ontario. So I think we have to do our due diligence.

Dr Young is one of many deputants we hope to invite, to hear from people who have been and will be on the front lines, whether they be emergency services personnel, medical doctors, government officials or ordinary volunteers in communities across Ontario, to ensure there is a plan in place and that the Ontario resources are there for them, that we can provide those resources for them to the best of our ability. That's what this committee is about. That's our focus.

We are open to suggestions and, hopefully, as we said in the subcommittee report, asking different witnesses to come forward and listening to people in an unusual and, I think, unprecedented format. We're going to use the expert panel format so we can hear from experts, people on the front lines, on how we can better give them the tools to meet these calamities.

Perhaps Mr Kormos is unduly critical, but I think he has the right to be critical, because sometimes government committees are going through these processes with blinders on. Hopefully we can really have an objective viewpoint and ensure that we look at every aspect of government to ensure they're prepared for an emergency that may beset this province.

All those in favour of the subcommittee report?

Mr Kormos: Recorded vote.

Ayes

Arthurs, Broten, Dhillon, Hudak, Sandals, Zimmer.

Nays

Kormos.

The Acting Chair: Carried.

EMERGENCY MANAGEMENT STATUTES REVIEW

The Acting Chair: The first item before us is the first presentation, and it's from the Ministry of Community Safety and Correctional Services, the Commissioner of Emergency Management, Dr James Young. Sorry for keeping you waiting, but I understand that you're giving us basically as much time as the committee feels is warranted today.

Dr James Young: Yes. And certainly if it's necessary to recall me or if there are other things I can do to assist the committee, I'm happy to do so.

The Acting Chair: You also have some other expert witnesses with you, if they need to be called: Neil McKerrell, the chief of Emergency Management Ontario. Neil, if you could identify yourself by standing up. Oh, he's out of the room right now.

Jay Lipman, counsel, legal services branch? Jay is here.

Monique Guibert, senior adviser to the Commissioner of Emergency Management? Thank you.

Dr Young, if you could begin, please.

Dr Young: Thank you very much, Chair, and members of the committee.

What I'd like to do today is to start and put a framework around why we need legislation and what our experience has been. I recognize that the various members of the committee have varying degrees of experience in emergencies and in the management of emergencies, and so what I hope to do in a brief period of time is to educate and bring people up to a certain level where they understand the framework for future discussions.

I brought with me a set of slides that I'd like to work through, if I may. Starting with slide 1, which is titled “Ontario Events,” you notice on the left side of the page that I've listed significant Ontario events: Hurricane Hazel, the plane crash at Malton 35 years ago—and I purposely call it “Malton” because that's what it was known as at that time—and the Mississauga train derailment, which caused hardship but in fact resulted in no loss of property or life.

All represented significant events in Ontario history, but you'll note that all of them took place more than 20 years ago. I think that's significant, because we ended up with an unparalleled period of time in Ontario where, despite the size and the complexity of the province—and I'll come back to that—we saw very few problems. We grew increasingly complacent during that period of time.

At the point in time when Emergency Measures Ontario became part of my responsibility, we had about 20 people involved in the entire program for the entire province, 10 of whom were involved in nuclear issues, 10 of whom were involved in non-nuclear issues. For a province this size and with this complexity, that was certainly much less than what we've come to recognize we need.

The ice storm was really our first warning in more modern times of the issues we face. I would note that while the ice storm was a 100-year storm and the Peterborough flood two years ago was a 100-year flood, the Peterborough flooding this year was a 300-year event. I'll come back to that, but there's a real lesson in that.

I believe the ice storm in fact may represent environmental problems. We had a unique situation where the temperature was just such that we got a phenomenal amount of ice forming instead of either a heavy rain or a snowfall. Some 37 communities declared emergencies. On that occasion, there was neither the need nor was

there a provincial emergency declared. But the province obviously took a lead role and coordinated and assisted the 37 municipalities considerably.

The next big event, anywhere you ask in North America, was 9/11. We had, certainly, major effects immediately when 9/11 occurred. We obviously had grounded aircraft, and we had travellers to look after. We had panic in society that we had to deal with. We had to make decisions about running government. We had the immediate border implications. For the first time I'm aware of, the border actually fully closed for a period of time. We had to get that border open again and make sure the border was safe and deal with the new realities.

1340

We had some planning for terrorism before that, but everyone came to realize that the amount of dedicated planning and the challenges we faced were considerably different, and they included bioterror. If we wonder about bioterror, we had, in Ontario alone, over 800 incidents of reported white powders during the anthrax scare. We continue to have some to this day, and we've had to develop protocols and ways of dealing with things like that.

SARS is a good representation of what bioterror might look like in a different form. We understand SARS now. We understand that it represented a disease that got out of the marketplace and out of civet cats and into humans. If someone isolated the virus out of an animal and introduced it purposely into a society, that would be another way that bioterrorism could show itself.

Certainly we've learned a lot from SARS. SARS was actually the first provincial emergency that has ever been called, the power blackout being the second. So those two, in fact, represent the only two full provincial emergencies that have taken place. But I think it's important to note that whether we call a provincial emergency or whether we don't, whether we're dealing with the ice storm or the floods in Peterborough or a full-scale provincial emergency like SARS or the power blackout, the province does have an important role to play. We will be counted on and we will need to deliver certain services and advice, as I'll come to later in my presentation. In fact, much of what we're trying to do is devise a system that either prevents the emergency or lessens the emergency and hopefully offers the opportunity to stop the event before it has to become a full-scale provincial emergency.

To do that, it may be necessary to make some legislative changes in other legislation, such as the Health Protection and Promotion Act, the Coroners Act or some of the environmental acts, but in the event of a full provincial emergency, we have learned from events that things arise that would require, in my estimation, broader provincial powers than currently exist. Again, I'll come back to that point.

Why should we be worried in Ontario? I'll quickly go through these things but I think it's important to recognize that we do have 40% of Canada's population. We have 50% of the chemical industry of the country. The

chemical industry represents 30 million shipments of hazardous material per year, so clearly some 15 million of those would be in Ontario. Of the rail and road accidents involving hazardous material, 60% of them are in Ontario in any given year.

Some 40% of our power comes from nuclear generation. While nuclear power is highly regulated, there's also the risk, if something did happen, of it being catastrophic. That's a whole area where we have very special preparations in place and have to pay very close attention.

Our 21 nuclear reactors represent the most concentrated nuclear reactor sites in North America of any jurisdiction. So this is unique to Ontario.

We average 20 tornadoes a year and we have potential earthquakes, including a fault under the Pickering nuclear reactor. We have between 1,500 and 2,000 forest fires each and every year. Again, while the last few years have been better, we have had years like British Columbia has experienced the last two years, and came very close about five or six years ago to declaring a provincial emergency because we had a situation with particularly dry weather and an inordinate number of forest fires that were proving very stubborn to control. As we've learned, particularly recently, floods are a common occurrence; they always are, in the spring in northern Ontario, but clearly in the last few summers we've seen them in southern Ontario as well.

So in answer the question on slide 4, "Will we face emergencies?" my unequivocal answer is, we will. I can tell you with certainty that Ontario will face emergencies. What I can't tell you is when they'll happen and what will cause them, but I can put within certain broad categories what will cause them.

We believe that we are seeing climate change. If you look at the BC forest fire situation, the California forest fire situation—15,000 people died last year in France of heat—we are seeing climate change, and that is affecting what we do.

We have interconnectivity and interdependency, whether we like it or not. There are obviously advantages in hydro, for example, and in computer systems, but there are also risks, as last summer demonstrated. We can mitigate and do everything we can to try to lessen that, but there's a long history, for example, in the hydro system of there being blackouts and problems within that system from time to time. When we studied it in the Canada-US panel, we recognized that we can improve it and try to increase the reliability of it, but we're still going to face these situations from time to time, leaving aside the potential terrorism threat to things like the power system.

We clearly have aging infrastructure, we have an unprecedented threat of terrorism, and, as we learned from SARS last year, we have the threat of pandemics. I'll come back to that, with the illustration of the work we've been doing on avian flu as something that could potentially cause a pandemic and in fact throw the entire world into at least a two- to three-year mode of trying to deal

with huge numbers of deaths and problems within society.

So the answer is that we're going to face more frequent emergencies. Our experience is that they're bigger. They are international in scope, whether you're talking about SARS, the power blackout, the ice storm or terrorism. They're all international in scope and, as everyone in this room would agree, they certainly are complex.

Just to illustrate one aspect, the aging infrastructure, slide 5 talks about that, but you can see that where most of the graph in fact is in the 25-year range for water distribution, sewage collection, public buildings and transit facilities, as we learned in the blackout, sewage and water distribution became our number one priorities because of the risk to human health in those situations. They became a priority in Peterborough in the last few days as well.

We started out with a system, then, prior to the ice storm and 9/11, where we only paid attention to preparedness and response. I have to say that in Ontario we have a good record of response. We have a good record because we have superb police, fire and ambulance services, and we have a history of people working together. That becomes very, very critical in managing emergencies. But we have come to learn that preparedness and response alone will not do it. As SARS illustrated and the quote from the Chair aptly illustrates, when an emergency happens, I can only deal with the system that's already built. I have to make that system work. I have to design other infrastructure around it, and other ways of managing. That means, then, that we're going to have bigger calamities and more problems if we start doing it at that point in time. The real work needs to be done in advance so that we can minimize the effect.

We've come to recognize that a generic set of plans, a single binderful that will manage every emergency in Ontario, is not the way to go. We have to do risk-based plans. We have to figure out what the risks are in communities and to provincial ministries, and then we have to do specific planning for those risks.

We've changed from doing emergency measures to emergency management. You'll see that the emergency management program is much broader than it used to be.

Slide 7 recognizes why that's necessary. There is work that has been done in the United States that indicates that if there's a major emergency and there are five businesses that experience a disaster or an extended outage, two will never reopen. So it's in the economic interests of the province to recognize that. Of course, governments, whether municipal or provincial, will reopen after a disaster, but as we've come to recognize, there will be a lot of soul-searching, a lot of questions asked at that point in time as to why we aren't more ready, why things took the route they did and why the economy is suffering as much as it is. So we've come to recognize that an integrated emergency management program takes into account private industry and critical infrastructure, which is 80% owned by private industry, and takes into account

individuals, communities, the provincial government and our federal partners as well.

1350

Slide 8 talks about the four pillars of emergency management—the change in name is from “emergency measures” to “emergency management.” We now look at how we can do hazard identification and risk analysis in regard to mitigation or prevention, preparedness, response and recovery. We need to do work, and are doing work, in all of those areas. In areas like mitigation and recovery, for example, we had done very limited things before. These are new areas where we have to go through each and every risk that exists and work out things in relation to it.

Slide 9 shows that this work in regard to all of these areas has to be done at multiple levels. It has to be done at a municipal level, it has to be done by the provincial ministries and it has to be done by individual businesses. All of those levels of government have to be able to manage their own business continuity relative to these various risks, but they also need to be able, in the case of the provincial or a municipal government, to work to assist those who need help. So the provincial ministries have to work with external stakeholders and be able to manage the risks to the best of their ability if and when something happens, and they have to make plans now in regard to all of these areas: mitigation, preparedness, response and recovery.

If we look at mitigation and prevention, the ditch in Manitoba is actually one of the prime examples of the government doing an excellent job in mitigation. There was a lot of debate at the time that ditch was built. Now, since the 100-year flood a few years ago, the discussion is, “How do we increase the amount of work on the ditch, and how do we protect other communities as well?”

We've been doing work in communities, for example, around dangerous goods, and we've been looking at where marshalling yards are in the chemical industry and if it is necessary to store massive amounts of chemicals in places like Sarnia, where the city, the chemical plants and the rail yards are all intermixed.

You can mitigate on many levels. It can be huge projects or it can be small projects, but clearly we've still got an awful lot of work to do relative to that.

If we look at preparedness, preparedness used to mean that we would write a plan and the plan would sit on the shelf and when something happened everyone would pull the plan out, open it up and follow the directions within the plan. I must say that the plans are good and useful, and they work for about five minutes and then you start modifying them. What's important in the plan, in fact, is that people have been trained on the plan and understand the concepts of the plan and that part of that training includes exercises. That allows people to figure out what their role is, to interact with the people they're going to need to interact with and to in fact be ready when something happens and when the inevitable changes come to the plan.

Included as well in preparedness now is public awareness and public education. Those are areas where we have a long way to go, particularly as it relates to individuals.

We have also been working on improving response. The particular area of response that comes to mind is that we've been working on hazardous chemicals and on bioterrorism. We've been doing a lot of work with fire departments, police and ambulance. We're running courses for first responders on areas like bioterrorism and hazardous materials. We're putting out a lot more educational material to help people manage these sorts of things.

A good example came just a few weeks ago, when we had a toxic spill along the Trans-Canada Highway in a rather remote community. We were able to send a hazmat truck in. We had the expertise to first of all protect the communities around there and then deal with the spill rapidly and get the highway open and commerce flowing within about a 12-hour period. But that came with the work we've been doing in the last few years.

One of the hallmarks of what we're trying to do with response is to bring in an incident command system, so whether it's the police, fire, ambulance, the municipalities or the province, we're all organized the same way and we all use the same system. When we're sitting in the middle of an emergency, we're speaking the same language and we're managing it in the same way. Again, there's a lot of work to be done on that, but this is the system that we're proposing to bring in and disperse. It's based in the FEMA system in the United States, and that again allows us to interconnect with border communities, to enter into agreements, to work with them when incidents occur and to bring in people and resources and effectively use them if and when something happens.

The fourth pillar is recovery. We came to realize that recovery is long, protracted and difficult. Again I point to Peterborough: You see that the recovery is taking many weeks. That actually is very often the longest phase of an emergency, as the community repairs infrastructure, insurance claims are settled and recovery takes place.

Part of recovery, we came to realize, may actually affect the management of an incident as well. During SARS, we were using quarantine for the first time in 50 years. One of the important things in using quarantine was getting people to abide by it. One of the important ways of getting people to abide by it was by offering financial compensation so they would in fact abide by it and stay in quarantine if and when they were ordered by the medical officer of health. We got approval from the Ontario government to institute a quarantine program and to pay people for that. That resulted in us being able to manage the quarantine in an effective manner. So we're in fact saying to the federal government that many government programs need to be devised. Payment for people who are quarantined or compensation for people who lose cattle or birds during an avian flu need to be worked out in advance so that people like me can then institute those programs when things happen and we can use them as a tool not only of recovery but of getting

compliance in managing the emergency if and when it happens.

Page 14 talks about the emergency management system, and the important thing is that it does start at the individual or family level. Some of us learned the hard way during the power blackout that it's useful to have rotary dial phones, lights and candles. My cupboard at home was rather bare when I got home and I didn't have a rotary dial phone; I do now. I've bought wind-up radios and wind-up lights now for my cottage and my home.

The community then becomes the major centre. I'll come to the next set of slides and we'll talk about the various levels of government, but we shouldn't lose sight of the fact that most emergencies get managed as low down in the cycle as you can. What we say to individuals is, "When an emergency strikes, you should be able to look after yourself for a period of time while your community then begins to address the problems." But the management of it then will be at a community level, with the province and the federal government assisting, offering expert advice and in some cases directing that certain things be done. But it's the people on the ground who are managing it as well, at the community level, and the whole system of incident command that we have devised is set with the theory that you manage and deliver as low down in the system as you can at a local level.

Emergencies do call for extraordinary measures in extraordinary situations, and that's the definition of an emergency. You have an extraordinary situation and you need to bring the resources of some level of government, either the provincial government, the federal government or the municipal government, to bear in order to control the situation. A good illustration is that there are non-declared emergencies every day in police and fire in the cities, but once the situation gets large enough and involves a big enough number of situations, then the municipal council or the municipal leader may declare an emergency, and when it involves multiple communities or gets too large for that community to manage, it becomes a provincial emergency.

1400

You deal with operational issues at the lowest level possible and, as I've mentioned, an incident management system with command and control is necessary in order to bring order to the situation.

Community response: Obviously within the community they have the responders; they have the bulk of the people and the experience of doing the day-by-day response. The emergency site will be within a community. They will use, inherently, incident command systems. It's the head of council who declares an emergency at the municipal level.

Once that emergency is declared at a municipal level, they operate an emergency operations centre. The head of council commands the group. The control group includes fire, police, ambulance and other community services, and there is provincial representation at that level, in the control group, to assist right away, whether or not there is a provincial emergency. Eventually, as I've said, we're

going to have a provincial incident management system consistently across the municipal sector.

In a provincial response, whether or not it's a declared emergency, Emergency Measures Ontario coordinates the provincial emergency response. There are various levels of response within the operations centre. We can go to an enhanced mode or we can go to a fully operational mode, depending on what has occurred.

The provincial operations centre operates now on a 24/7 basis and routinely monitors everything that goes on in the province and produces a daily situational report on what's happening.

Currently, a provincial emergency, if declared, is declared by the Premier.

There are various ministries that are considered order-in-council ministries. These are the ministries where there is a clear chance they will be involved in an emergency, and they are particularly responsible for doing the planning for the areas that are listed next to them. But what our experience in SARS and in the blackout has proven is that there is no such thing as a ministry that won't get involved in an emergency. The 10 that are listed here are the most obvious ones, but we found in SARS that the Ministry of Tourism, intergovernmental affairs and economic affairs all became involved. Pretty much every ministry ends up getting involved in emergencies. So they not only have to pay attention to their own business continuity plans, but they in fact will have a major role to play in an emergency, and they will become important conduits in managing their stakeholder groups.

Slide 20 shows the model for managing an emergency within the province. The key is that you separate out the operational and the strategic areas within managing an emergency. Again, as much of the emergency as can be managed by the lower-right box within the EOC and the municipality is done there. Within the ministry groups, starting from the bottom of the page, there will be a primary ministry action group—in the case of SARS, for example, that would be health, and in the case of the blackout it would be the Ministry of the Environment—that would be the primary group that is the most affected at the beginning of the emergency. Then the other ministries come into play as supporting ministry action groups. They report and they exchange information and ideas and resources within the provincial operations centre, and they report to the group that I chair, the operations executive group.

The issues that arise that can't be solved on an operational basis come forward as strategic issues. I would bring those forward to the emergency management committee of cabinet, who then discuss those issues, debate those issues and give direction as to how the operationing will be settled. I carry those messages back, and again those messages get passed into operational as low down on the cycle as we possibly can.

In order to move an emergency along, there has to be a lot of structure. Meetings have to take place at predetermined times and have to last predetermined lengths of

time; decisions have to be forged very quickly and passed through. Otherwise, you get bogged down in endless meetings with no decisions being made and the situation worsening.

The federal government is also involved in emergencies, and slide 21 partly breaks out those situations. Primarily the federal government is involved in war and in international events. The province takes the lead in public order and public welfare situations.

The federal government has new legislation governing emergencies. They have not declared a federal emergency. They would be involved if there was a terrorist act. They would be involved if there was a pandemic. But one has to recognize that the federal government is the furthest from the field where things really happen, and they have the least direct, daily operational experience. So the federal government would not bring significant operational experience to an emergency, whether it was a terrorist act or whether it was a pandemic. They would bring—and did bring, for example, in the case of SARS—technical expertise from Health Canada.

They would have expertise to bring, for example, in any pandemic, health situation or transportation issue, but if it was occurring across the whole country and there was an event that was so large it was a federal emergency, I think you would see the federal government in the smaller provinces and saying to Ontario, "Manage this the best you can. We're busy with other provinces." So essentially our plans have to be robust enough that we're able to manage things within the province and can be of assistance and help prevent emergencies from spreading in other provinces and bring our expertise and our operational expertise to those other provinces. We would count on the federal government for financial support, for some technical support—and there are some stockpiles, for example, of medical supplies, but those are limited and those would take probably 24 to 48 hours, at least, to disperse to the scene. So we have to be able to manage until even those supplies, limited as they are, would show up.

If we look, for example, very quickly, at Peterborough, we're dealing with a situation where a thousand basements were flooded. Six hundred homes had to have their electrical service and gas shut off. One hundred and fifty people in one nursing home had to be evacuated. There were four roads and bridges that were badly damaged. But throughout it all there were no injuries, deaths or health consequences that I'm aware of as a result of the Peterborough floods. That's a real credit to the Peterborough community, who were one of the more resilient communities and who had done more planning than most municipalities had done. The result was that they were able to manage this much more proactively than in the past.

The provincial government did contribute that day. Ministries involved included health, natural resources, our ministry with regard to policing and EMO, the Ministry of Energy and the Ministry of the Environment. We were able to break bottlenecks. When the nursing

home people had to be evacuated to the Evinrude Centre, there was an older facility in the area that hadn't been decommissioned yet. The Ministry of Health sent inspectors in there and they helped recommission and get people moved by 6 o'clock that night. They were in what was the second-best facility and certainly much better than the Evinrude Centre. So with a minimum of disruption to the elderly people, they were relocated and looked after properly.

Again, the restoration of hydro and gas has provincial elements to it. There are rules about people having to apply for permits and wait for OKs, and provincial inspectors coming and OK'ing hydro being turned back on. Those are totally impractical when you've got 600 homes that need restoration of power quickly, both from a health point of view and from a human comfort point of view. We were able to broker, through the province, a better system of getting that done and getting the fees waived and the system up and operating. And ODRAP, through the Ministry of Municipal Affairs, is working on disaster relief.

So the common elements that we've come to realize are important in an emergency are that there's a need for a program in order to get started; programs have to be risk-based; and we need training and exercises. When you're managing an emergency, it's really quite simple: What you're doing is trying to ensure public safety and save lives, and do so in an ethical way. So if you always remember that that's what your aim is, it often becomes very obvious what needs to be done and what the priorities will be. It's also then something that I'm going to come to in a moment when we talk about the act and the need for strengthening in the act. It's because we need to be able to protect public safety and save lives in an emergency situation. We have to balance that against individual rights and try to find the correct formula to do that.

1410

Unfortunately, the safest and the best way when you're thinking about emergencies and potential emergencies is to overreact and then cut back rather than underreact. If you play catch-up and you underreact and you make mistakes, you'll spend much longer trying to repair the damage and the human or economic loss will be much greater.

As we saw during SARS, it's necessary to be increasingly transparent. I can tell you, it was quite a sight to sit in China and watch the officials doing Ontario-style press conferences every day and answering questions in a transparent style, but that became necessary even in an environment such as China.

There needs to be frequent communications and there needs to be a proactive approach. By a proactive approach, I mean you monitor a situation and you react to it before it becomes an emergency. I would use as an example the avian flu this winter. We had daily phone conferences where we monitored SARS and we monitored the avian flu in Asia and ultimately in British Columbia. The risk in the avian flu is that you had birds that were getting sick and were dying, but you had 34

humans who became infected with the virus. Twenty-four of those 34 people died of the avian flu. If any of those 34 people had happened to be carrying another human virus at the same time, you can get a situation where a new virus is formed and that new virus has the ability to pass from one human to another and that virus may be as infectious or more infectious than the virus was before it became different. That is what we believe happened in SARS. We believe that a virus that was in civet cats, either in pigs or humans, became a new virus and had the ability to pass from one person to another and had a death rate of 10% to 15%. So the great risk with an avian flu is that it could turn into the new Spanish flu. We think that's how the Spanish flu started in 1918-19. Between 20 million and 50 million died of the Spanish flu at that time.

So we have become very proactive. We had weekly meetings of about half of the ministries of government where we sat down and we said, "What's happening in Asia, what's happening in BC? What do we need to do to prepare if it somehow gets spreading across the country? How will we manage it and what would we do?" That in fact led to a very rapid response a few weeks ago when we had a false alarm in the Niagara area. We believed there was a possibility that there was an avian flu in a barn there. We shut the operation down very quickly and we worked with the federal government in a very coordinated fashion in order to ensure the safety of the humans and also the safety of other farms in the area and tried to minimize the effect if it had turned out to be an avian flu. We believe this is the best approach to emergencies in the future.

In order to do this, we believe that there may need to be some legislative changes to certain acts within Ontario. To give you an example, if we had an incident of avian flu in Ontario, we would need a system for disposing of the carcasses. In British Columbia, there were 10 million birds that had to be potentially disposed of. Right now, the act in the Ministry of the Environment in fact specifically excludes municipalities from having to agree to animal waste being disposed of in their dumps. So we have a problem that we would have nowhere to put the birds in a situation like that. Other situations have arisen over time where we recognize that we may need some additional change to legislation in order to manage something, short of having to declare it a provincial emergency.

We also came to realize in the power blackout and in SARS that the powers that currently reside in the Ontario act are not as broad as they perhaps should be. The Emergency Management Act, when it was redrafted, made mitigation and prevention and all of the four pillars that I mentioned mandatory in the programs, and required both provincial ministries and municipalities to do much more planning in all of the ways that I've described up to now. At that time we had not had a provincial emergency and, frankly, we did not look at the powers within the act. What we came to realize with SARS and the power

blackout was that we should have looked, and we need to look, I believe at this point in time, at those powers.

Right now, the Premier would declare an emergency. Once the Premier declares an emergency, he has any existing powers that exist within legislation in his control, but he has no additional powers. For example, we recognized during the ice storm that we do not have in Ontario the power to evacuate. So if we got into a forest fire situation or a flood situation or any other situation where we might need to evacuate people, we can ask people, we can coax people, but we can't currently order them to be evacuated. That poses problems.

The powers that Ontario has versus the powers that the other provinces have are illustrated on slide 28. This obviously is much of the discussion that you need to have, but I would point out that currently Ontario has virtually no powers. All of the other provinces have substantial powers.

When you study the other legislation and you look at what exists in other legislation, I would suggest to you that what you will see is that most of the other legislation describes the powers in fairly general ways. The reason for this, in my estimation, is because it's extremely difficult to define in advance what powers you will need or what situations you will face in an emergency. If you had asked me about what powers might be necessary in regard to human health prior to SARS, I could not have told you accurately exactly what we would face and where the problem would lie. One of the problems was that we issued directives in SARS to the hospitals. I think that was the right thing to do. We needed to get people's attention and we needed to get the health care workers and the patients protected very quickly. We believed that the power existed within the Health Protection and Promotion Act. There are those who would debate as to whether or not the way to fix that is to make it clearer within the Emergency Management Act.

Some of the health providers have said to us, "Well, we complied last time, but we might not comply this time. We might decide we know better than the province does and we might decide to impose our own form of guideline or protocol if we got something like SARS again." You frankly cannot manage an emergency if everybody is going off in different directions and doing things in different ways. You need consistency. The public has to understand consistency.

The idea of adding powers is to use them in extraordinary circumstances. By having the powers, I believe that you would rarely have to use them. It's the old carrot and stick: If people know that you have the ability, they come to the table, they bargain in good faith, and they're willing to co-operate and find ways of making things happen. But if you have no stick, your ability to bargain becomes limited.

My fondest hope in an emergency is that I would never have to use the powers, that we would do it all by consensus. But the experiences in the power blackout and SARS have proven to us that you still do need to have those powers. You also need, and we acknowledge this,

checks and balances in place. They are extraordinary powers. But I would caution you in your studies, when you think about the emergency powers and the extraordinary powers, to not equate those as being the emergency. The emergency is called to bring order to a chaotic situation and to bring the resources of the province to bear. Only one of the tools is the extraordinary powers that we may need, and as I say, we hope we don't need them. You still need to call emergencies because you have such a large government involvement or the need to get everyone pulling in one direction or to get people's attention—so it's not the only reason for calling an emergency.

1420

People have asked me, "Can you legislate when you call an emergency?" You can try. But I can tell you that you know when there's an emergency; you don't need to write it out on a piece of paper. You're in a room and everything's going wrong and you realize you need to get everybody pulling in the same direction. You know in the pit of your stomach that you have an emergency. I don't know exactly how to put all of that in words.

There do need to be checks and balances and accountability in the system. Again, I think you have to think about that accountability in terms of: The goal of the emergency is to save lives. You need the powers. You need them at the time. You need to be accountable to them afterwards. But if that accountability is either too onerous or too early, then that may become a factor in how the emergency is being managed. The way the emergency should be managed is in relation to public safety and ethics. In my opinion, the accountability should come, but it should come at a point in time when, first of all, I have time to account because I'm not busy still trying to manage the worst of the emergency, and it should come in a manner that is as nonpolitical as possible, so that it's being managed for reasons of public safety and not getting into a political vortex.

I will certainly happily answer questions about the specific powers, but I know there are going to be presentations about that. What I intended to try to do was to bring to your attention what we're trying to do in managing emergencies and why we need the legislation and the important role that would play in managing emergencies in Ontario.

The Acting Chair: Thank you very much, Dr Young. What we'll do is start off by giving each party 10 minutes. We'll do a rotation, and then if we want to go around again, we can go around again.

We'll start with the official opposition if that's acceptable.

Mr Kormos: Especially in view of Dr Young's final comments—we got his material and we read his letter. We see the listed powers and the references to other provinces. I'm wondering if the committee would see fit to consider—because Dr Young says, "Here it is, but you're going to be hearing from other people"—and that's fair enough. It seems to me that the time when Dr Young might be most valuable is after we've heard from

some of those other folks and/or people who speak about or from those jurisdictions that have those powers. Then the committee might be better equipped to ask Dr Young to put that into the Ontario context. That's just a modest proposal.

The Acting Chair: In other words, you'd like to ask Dr Young back when, for instance, some representative of another jurisdiction makes a presentation?

Mr Kormos: We're going to hear from a whole pile of people. Some of the stuff is going to touch on the powers that Dr Young says might be suitable for Ontario but don't currently exist in Ontario. We will be better informed about those various options by virtue of having listened to those people and having them refer to those powers in various contexts. It seems to me that would be the time to talk to Dr Young in a more educated manner about those statutory powers he's proposing or putting on the table.

Dr Young: I want to clarify what I did with the list. The list is a compilation of powers that exist in other legislation versus Ontario, with the idea that that would give a context for the Premier and the committee to study each and every one of those. I want to be clear: I'm not commenting directly on all of them. It's an attempt to lay out what exists in other places.

Mr Kormos: You're not necessarily calling for any or all of them, subject to what the discussions are.

Dr Young: Obviously I have personal views, which I'm happy to share, but I want to be clear that I recognize it's the role of this committee to do all of those, and I'm just trying to be helpful by putting them on the table.

Mr Kormos: I appreciate that. That's right: Put these on the table.

The Acting Chair: I don't think there's any problem with maybe asking Dr Young to return, after we've heard from other presenters dealing with some of these different powers that perhaps other presenters talk about, and have you comment on them.

Dr Young: Sure. I'm pleased to do so.

Mrs Sandals: I certainly agree with Mr Kormos that it would be useful to have Dr Young perhaps come back when we've had an opportunity to hear from other folks, but I think it would also be useful, if people have follow-up questions from his presentation, to deal with them. There may be some answers and some more information he can provide us with now, before we go out to listen to other people. So I would prefer that we question now and question later.

The Acting Chair: I don't think Mr Kormos was precluding that. He was suggesting that that be done in addition.

Mrs Sandals: I agree we'll want to do some follow-up later.

The Acting Chair: Could we then begin with the official opposition for up to 10 minutes.

Mr Hudak: Thank you again, Dr Young, for your appearance and your opening presentation before this committee.

Just to make sure I'm clear on the last page, page 28, of your slide show, and I think that was similarly attached to your letter to Premier McGuinty from June 21: Powers such as the ability to evacuate, which exists in other areas but where Ontario is missing an "x," or to requisition, use or destroy property, fix prices etc, don't exist in any Ontario provincial legislation whatsoever?

Dr Young: No, they don't. When we've needed these things, some of them I believe you could debate may or may not exist under public health, for example, if you read it in its broadest sense, but sometimes it's clear and sometimes it isn't and certainly you could get a challenge. They certainly are not defined as clearly as they are in other jurisdictions where the acts actually talk about these things specifically and say that in an emergency these powers might be at the disposal of government should it so choose.

Mr Hudak: I don't know if you will be able to answer this for me, but I'm curious. When they exist in other jurisdictions, are they scattered among various pieces of legislation or do they exist under one umbrella piece of legislation for emergency preparedness, or both?

Dr Young: They may exist in individual ones, but this chart is based on looking at the Emergency Management Act or its equivalent in the various jurisdictions. So they are housed in the highest act, which is the Emergency Management Act. I can ask Jay Lipman if he's aware whether they exist in others. They may exist in other statutes to be used at times short of an emergency, but I'm really not sure.

The Acting Chair: Maybe you could identify yourself for Hansard, Mr Lipman, and help with that response.

Mr Jay Lipman: My name is Jay Lipman. I'm a lawyer with the Ministry of Community Safety.

Just to follow up on that point, I think it is correct to say that some of these powers exist in different statutes, limited to the purposes of that statute. For example, there is a limited power in the Forest Fires Prevention Act to provide for evacuations in the event of a forest fire. No doubt there are similar statutes like that in other jurisdictions. But just to be clear, all of these powers are derived from the emergency legislation in all of these other jurisdictions, so whether or not there are existing statutory powers that can be exercised by specific statutory officials, these are powers that can be exercised in most cases by cabinet in the other jurisdictions, or by a minister or something like that.

Mr Hudak: Do you care to quickly speculate, Dr Young, on why they don't exist in Ontario and they do in other jurisdictions? If I quickly peruse the material—and I'll look at it in more detail—a lot of the umbrella legislation was pre-9/11 in the other provinces. It had existed for some time.

Dr Young: Yes. We had not done anything with our act for a long time. Post-9/11, we expanded the size and scope of emergency management in Ontario. We focused and came to all-party hearings on the legislation and in fact got a high degree of co-operation. Not only that, but I remember it was the legislative committee that made it

mandatory that the plans be revised on a yearly basis. So they added to the quality of the legislation.

At that point in time—I can't tell you why—it just didn't cross our mind on the powers side. I don't personally remember having a lot of discussion about the powers within the act. We had never had a provincial emergency, and I don't think—we sort of realized that our act was so different than the others. In retrospect, we should have done that, but it just wasn't on our radar screen at that point in time.

1430

Mr Hudak: Let me say again, and more specifically again, I think all members of the committee would thank you for your leadership and thank your colleagues, particularly in taking us through the crises you mentioned of the past two years, SARS and the power blackout. In your experience in those two crises, given the powers you highlight that do not exist in Ontario's legislation, are there particular powers that you see as more important, that we should develop a bit more study to, or may have been useful in particular situations?

Dr Young: We certainly had experience in those with, for example, the directives in health, evacuations in the ice storm, the directives in SARS, rationing in the power blackout. The existing contracts, for example, that IMO had with heavy industry gave priority to heavy industry at a time when we in fact wanted heavy industry shut down. So you've got a contractual situation that says one thing and a reality situation that says that if they all power up, we're going to black out the province repeatedly. We managed it, but it could have been difficult.

So what I would do is look down the slide, when I talk about what we face—it's slide 4—you really have to look at not just what we face but what we could face with climate change. Climate change can be everything from ice storms to flooding to forest fires. You've got to look at all the various powers relative to the way things are connected and aging infrastructure or terrorism or pandemics. I think that would be the way I would measure it against those and say, now, is it likely and could it happen in any of these, and if it does, then probably we need to look seriously at it. What are the pros and what are the cons?

I say to you, this list is there and it's accurate, and there are things we are dealing with and believe will happen. I just can't tell you in which order or which ones first, but they're going to happen.

Mr Hudak: One area of particular interest I think I would expect for this committee—I guess we'll deal in areas of provincial and federal jurisdictional overlap—is the safety of our nuclear sites. I know some progress was made in 2000, 2001, in working out arrangements. I think a couple of the sites, though, may not have had armed security on site. Could you give the committee an update on where we stand on security around nuclear sites and as well, the next steps that need to be taken. I guess it would be obvious, but to let us know if that would be a prime target.

Dr Young: The nuclear is a good example of multiple layers of government being involved, because the regulatory body in the case of nuclear is the federal government. They're the licensing body. In fact, in the case of much of the nuclear, the owner is the province, with private industry involved as well.

We have worked very hard on it with the regulatory industry because of the terrorism. We certainly had a look at that with the Canada-US hydro panel I sat on, on the security panel. What happened post-9/11 was, the physical security around the nuclear sites was hardened. Things were done to limit access, and if that access is penetrated, to make them more physically secure. Checks of employees were put in place to a greater level than had existed before. There was an order from the commission to arm those areas, and that has been carried out. We worked with the industry and the regulator to try to smooth that out, and that has been achieved.

The industry has always been very safety-conscious, including the threat of terrorism, but it's much more so now. The risk to a nuclear facility, of course, is very difficult to tell. Theoretically, there are those who would say, with the design of our reactors, it would be very hard for terrorists to do much. There's also the risk at somewhere like Chalk River of someone stealing radioactive materials. That has to be taken into account as well.

Certainly everyone worries about terrorism because of the nature of a nuclear reactor. I can't tell you whether there's more or less, but I think, if you look at Madrid, where a simple bomb will do a lot of damage, you don't need to have even radioactive bombs to create chaos. I think we're worried about everything from bombs to biological to radiological. I think we're planning for all of them.

I don't know what it's going to be, but I think, increasingly, we're worried that something will happen in North America. I think we're naïve if we think it couldn't happen in Canada.

Mr Hudak: Mr Chair, I'm OK on the time there?

The Acting Chair: It's about one minute.

Mr Hudak: Dr Young, we do have, then, armed security at all four nuclear sites as it stands today?

Dr Young: Yes, it's there in all four.

Mr Hudak: The last general question I had is about information-sharing. With the orange alert now at the border in the United States and the discovery of the computer in Pakistan, to what degree does Canada get that information? Does it come down to the provincial level so that we can address our security accordingly?

Dr Young: It's much more improved than it ever was before. The nature of security information and intelligence, of course, is that you don't want everybody to know about it. By its nature, it's often based on rumour rather than on absolute fact. So how you use it has to be very measured as well.

There's been a concerted effort by the province and the federal government to try to make sure that the information, though, is flowing down as well as up. The co-operation between CSIS, RCMP, CISO, OPP and the

municipal police forces has really been focused on and dramatically improved in the last few years. But there's also the element of making sure that the municipalities and people like myself have the information as well, and that we're trusted to get that information. There's been a lot of work done on that as well. I have regular briefings from OPP, CISO and CSIS. There is an exchange between the federal government at Privy Council level and our cabinet office.

So the amount of information and the exchange is much greater. Again, it's not perfect yet and there are burps along the way every once in a while, but it works most times much better than it did. We would have a pretty good feel that the Americans were going to change their level before they do it. Sometimes we know not too much before. Sometimes we know further in front of it.

The Acting Chair: Mr Kormos?

Mr Kormos: No, thank you.

The Acting Chair: Ms Broten?

Ms Broten: Dr Young, I'm wondering whether or not we've taken advantage over the last number of years, in the face of the disasters that the province has faced, and debriefed on those two—say we take SARS and the power blackout as two examples. If you can share with us, so that in this committee we're moving forward from what we as a province were able to do through the use of other legislation—that maybe it's not as coordinated as you might like in the emergency management statutes—because it does exist elsewhere, so we used that and it worked; what we were able to do through negotiation; what we were absolutely prohibited from doing as a province; and the failures. That would be my first question.

Dr Young: As Canadians, we always debrief well. The commissions, along with the Brits—we do a very good job of paying attention afterwards. It's second nature in emergency management to do reports after an event and try to learn as much as you can from them. In fact, if we look at SARS, we had the federal commission, we've got the Walker commission, which I sat on as an ex officio member, and the Campbell inquiry. Certainly Justice Campbell has been talking to us a great deal and currently is looking at emergency management actively. So we've looked at that. We did reports and studied after the power blackout as well.

1440

There were a number of areas that we've learned a lot in and I would say we've increasingly become much more proactive, as I've described. We've come to recognize that the role of all the ministries is much greater; it's not just the 10 ministries. In fact, in both the power blackout and SARS it was some of the ministries that we never paid any attention to about emergencies that played key roles. In the last days of SARS, the trade issues and the tourism issues—we already had SARS licked but we had lingering problems afterwards, for example. So we've come to recognize that the role of the ministries is very different.

We then have done work on a number of areas. Governance was one of the areas. Justice Campbell has talked a bit about that, and the Walker commission has. The charts that I showed you about how we would manage within the province and the defining of my role within the province is as a result of what we've learned. It's clear that there has to be a hierarchy and there has to be a way of managing emergencies. My role as commissioner is to not only advise government on emergencies before they happen but then to take a lead operational role when they do happen, and that's been defined within government. So we've learned governance issues.

Right now we're looking at bolstering and relocating the provincial operations centre. The operations centre obviously becomes a real key area when an emergency happens. We have it in a less-than-desirable place right now. While it looks like there's a lot of space when it's not fully occupied, when an emergency happens and you're looking for boardrooms all over the place and you're filling up rooms and staying for weeks at a time, it's interesting how quickly it shrinks and you see all the warts in the system.

About 10 or 15 years ago the emergency centre for the province was in the OPP headquarters down on Lakeshore. There was a room with about five phones. There wasn't even a fax machine and there wasn't a computer in sight. We were going to manage anything that happened in Ontario using that. So we've evolved a long way.

We've been doing work and thinking. We've done the governance piece and we're working on the provincial operations centre. There's a large piece of work that has to be done on ministries and municipal governments getting their plans, their training and their exercises up to the basic level that's necessary. We're working within government on that piece and we are working on the regulations that will be passed that require by a fixed date that the three levels of plans are in place. That's an ongoing piece. I must compliment the municipal governments that are really working very hard on this. As I mentioned, in Peterborough it paid dividends for them already. So that's the third piece.

The fourth piece where we've recognized the need for something to be done is the legislative piece, and that's why we're here today. In speaking to the Premier about our risks, I mentioned repeatedly to him that I felt we had some weakness in the legislation and we needed to study it and decide what tools would be available.

Ms Broten: Did the debriefing after SARS and the power blackout specifically identify the lack of powers as being problematic in those two emergency situations?

Dr Young: Yes, it did.

Ms Broten: Did they list evacuation or were there identifiable powers that were listed out?

Dr Young: The main thing in SARS would have been the issue of directives and whether we could or couldn't issue directives in future. But it raised issues around quarantine and there was some legislative change in the

quarantine act between SARS 1 and SARS 2, so there are the quarantine issues.

It raised in our mind a myriad of other issues though, if we got into a pandemic situation. I think the Ministry of Health will talk to you about things like vaccinations and other sharing of health information in extraordinary circumstances. That was certainly an issue in SARS as well that comes to mind: What information can we share, and how and why? Those certainly came to light.

In the hydro it was the rationing and the ability to ration that was particularly troublesome: Could we in fact restrict the amount of hydro that went to heavy industry or to any other person and give priority to places like sewage systems and refineries and hospitals at the expense of other industry, and what was the legislative basis for doing that? Those are the kinds of examples that come to mind.

Ms Broten: The powers that have been identified that other jurisdictions have: Do we have knowledge of them being exercised in other jurisdictions?

Dr Young: I'm not sure. We'd have to check with them. I think many of them haven't had provincial emergencies, but what you notice is that they're very similar, because when people actually start sitting around and doing crystal gazing, they start to say, "Well, this could happen and that could happen," and you get left with sort of a common list. Certainly when we did that among the bureaucrats, we actually came up with a list and then started to look at other legislation and found the list that they had was very similar to the list that we had come up with, because you start to put together scenarios that recognize the same kinds of problems. But again, no matter how extensive the list is, when it actually happens it will be something you never thought about, so your lists have to be broad enough to take into account the fact that the unexpected will become the norm when an emergency occurs.

Ms Broten: A question that perhaps legal counsel might answer if you don't know, Dr Young, is whether or not the powers have been challenged in other jurisdictions for being too broad or impinging on privacy rights or other constitutional rights in terms of the search without warrant, whether those types of powers have been challenged in other jurisdictions.

Dr Young: According to the Attorney General's people the other day, they haven't been in the other provinces at this point.

Mr Lipman: There's no sort of real case law examining these powers and the extent of the powers and so on.

Ms Broten: My last question follows up somewhat on a query that Mr Kormos made earlier, and that is about first responders. From everything that I've read about emergencies, that's where the strength of a good response comes from: a first-response team that identifies it and puts the information up through systems that exist. I wonder whether or not you want to speculate as to whether, when we meet first responders, they themselves will view that added powers are important or whether

they'll have other priorities as to what they need to respond in emergency situations.

Dr Young: We're there to give them the tools and the direction they need, so we're viewing the same thing from different points of view. Certainly one of my priorities is occupational health and safety of the first responders, whether they are hospital workers or whether they're fire or police, or farm workers in the case of avian flu. So we're at the same process, but what I'm worrying about may be slightly different than what they're worrying about. When I go out and I hear lectures on SARS or the power blackout from various people involved, I always learn something. What they bring forward as their issues may not have been something that even got up to me, because I get whatever's left over that somebody couldn't solve at the ground level.

I think what you'd hear them say, though, and what I hope you'll hear them say, is that they need information; they need training. We're trying to give them those things. We've set up a course at fire college where we bring the first responders together and train them together so that their response is integrated. They need critical incident management training so that they manage in the same way together. They need equipment. They've gotten some of that through JEPP grants, and the federal government has increased JEPP grants. They will tell you, I'm sure, that they haven't had enough JEPP money, and that's not an area that the province has directly funded, either police or fire. We have done the educational part and teaching materials; we have not directly funded. We have pushed the federal government quite hard to increase JEPP funding.

I think if you look at the United States, there's been a greater flow of homeland security money for equipment at a local level. Using that, they've filled some gaps that are frankly not terrorism problems but in fact just good management. That's one of the benefits of all of this. Whether you believe or not, for example, that there's terrorism, 95% of what we do to get ready for terrorists is applicable if you have a situation like SARS come along or you have another health problem or you have some other kind of emergency. It turns out that it's great training and it's great thinking, and that's how we knew what to do with SARS, because we'd been thinking about bioterror.

1450

The Acting Chair: What I hope to do is ask a couple of questions myself, and then I'm going to go around again to see if other members would like to ask questions again.

Dr Young, just a couple of questions in terms of your presentation: I was interested that you mentioned that you keep tabs on events in Ontario on a regular basis through your office and you can request situational reports. It's not of major consequence, but I know this weekend there was a shutdown on the 401 on Friday afternoon between Port Hope and Cobourg. It was unprecedented, I think. It was six or eight hours. There

was a major fatality there. I happened by accident—no pun intended—to be stuck in it.

What I was thinking when I was sitting there was that there's basically no plan in terms of moving emergency vehicles through this bottleneck, moving traffic if you've got expectant mothers or you've got people with heart attacks. Everybody was sort of on their own trying get off exits, and then when you got off an exit, there was nobody directing traffic or no signage of where to go. The concession roads were all blocked. I was thinking, if there is something of a major nature that occurs here, there is essentially no direction given to the tens of thousands of Ontarians who are stuck on a major highway. If there had been, let's say, God forbid, a chemical spill or something happening—and by the way, that same day there was a spill of a couple of tanker trucks going west-bound on the 401. But there didn't seem to be any plan through radio communication, notification. Frankly, I didn't see a police or government cruiser or vehicle for eight hours—no sign or sight of any government involvement.

Mr Kormos: What have I been trying to tell you, Mike?

Dr Young: Maybe I can address that. What you're seeing at that point is a local response. There are quite detailed plans, for example, around nuclear facilities. If you had a nuclear incident, the way it's meant to be managed is that you manage an evacuation in a systematic way and very carefully. So you choose what areas and what sectors to evacuate. MTO, local Durham police and OPP have quite detailed plans.

Will the public follow them and will you be able to get people to not clog everything? That's another question. It'll work some and it won't work in other ways. In a situation like that, if the spill is big enough, the Ministry of the Environment, the OPP and a number of provincial agencies get involved along with local people. What you've potentially got on a long weekend with a fatal accident on the 401, most likely—I don't know all of the details, but if I put on my old chief coroner's hat—is an investigation that has to be done as well. You've got potentially a criminal investigation and a coroner's investigation and you've got a site that you can only clear so fast because of the problems inherent in that. That becomes a problem. We have done work to try to speed things along on the highways. There was a red tape project a couple of years ago to look at trying to improve it, but you've got to be careful because if you clear it too fast you may ruin an investigation that becomes very important later. It's a very difficult problem.

Can lessons be learned? Of course, but that's a local response that probably needs some tuning up.

The Acting Chair: Again, I would just like to comment. Considering the number of trucks that we see on the 401 and the cargo they're carrying and the volatility of some of that cargo, and the dependency we have in southern Ontario on the 401 as a major arterial, and given its proximity even to Pickering and the nuclear sites there, is there some kind of traffic management crisis

plan that is in effect that gets deployed on a regional basis to ensure that the medical vehicles or the cleanup vehicles, and people who need emergency treatment, get moved on and off this highway that's basically closed?

Dr Young: That's exactly what we're talking about: risk-based situations. For example, for Pickering, for communities that are close to the 401, for the Ministry of Transportation, for the OPP within our ministry, high on their list of risks would be hazardous materials and accidents on major thoroughfares.

In the system that we're building, what they need to do is recognize that risk, do the best they can to mitigate that so it doesn't happen, and then have plans in place that all of the alternative things you're talking about can spring into action and you try to move traffic as smoothly as you can, and plans in place so that clearly then the recovery or the cleanup is as fast as possible. That's exactly the kind of program on a micro level, but you have to do it right across the province in every community. That's the kind of approach we're trying to take, and that's the sort of thing we're saying to every community: "You have to recognize what's most likely to happen and don't just have a general plan. You have to have a plan specific to that kind of risk in order to minimize the effect. But, better yet, see if there's a way of preventing it from happening to begin with." That's why you look at, for example, road construction. How you set up a road construction site is very important, because if you set it up wrong you increase the chances that you're going to get pileups and people killed at the construction site. You've got to learn all those kinds of lessons.

So that work's going on, but it happens every day in Ontario. There's a spills action centre in the Ministry of the Environment, and they're busy every day of the year managing spills. If we're lucky, it's not on the 401, but the Trans-Canada is the other one where it happens quite frequently.

The Acting Chair: I don't know if you read William Thorsell's article in the *Globe and Mail*, I guess it was two weeks ago, where he talked about, if there were a hydro blackout of potentially 30 days—we had one here of basically one or two days—what would our plan be? One small example was during the last blackout, which was about this time last year, when a lot of citizen volunteers took up positions directing traffic at intersections. They did it spontaneously, they weren't told by anybody, and they really helped in terms of ensuring that there was safety and security for people who were trying to get home at that infamous 4:30 period last year.

Is there now a plan in place if that type of thing were to happen again and lights go down? You'd hope that the volunteers would come out again, but is there a more systematic approach? Is that being worked on in saying, "Can we call on certain volunteer organizations or auxiliary police to come to the spot?" I remember I was helping an individual out at the corner of Avenue Road and Eglinton. He was a very brave young man who was a salesman for Pitney Bowes. He just got on the corner and

started directing traffic. I said, "I'll watch your backside here and make sure there's nobody making illegal turns into you." What happened is the auxiliary police officer didn't show up until 7:30 at night, and that was when basically all the traffic had gone through. That young man just walked away. I took his name and I thanked him profusely, but he just went away. But there was no system in place, nobody who was calling anybody and saying, "OK, traffic lights are down. Here's what goes." Have we put something in place now, having learned that lesson from last summer?

Dr Young: I think everybody has looked at their plans and are putting things in place, but when something happens you won't avoid all of the chaos that exists at the beginning of an emergency. It's the nature of an emergency that that's what happens.

I worked a long time on the Swissair crash, and I remember people talking about the plane going down and trying to figure out, first of all, what had happened and then where this big, loud bang was from and what it represented, and then trying to figure out whether or not anybody had lived from it and just running around for the first few hours. It's true of anything. It took us a day and a half to figure out which of the 37 communities were the most affected, because some of them were managing and we had to finally send the police in to ask them whether or not they had an emergency because some of them were fairly self-reliant. But it's going to be New York City, the pictures of people running in all directions. Despite the best planning, the nature of an emergency is that it's chaotic at the beginning.

1500

What we need to build is better risk-based plans that take into account all the things you say. We have been working and are working on better citizen volunteers and getting more people trained. That's the individual and community response. If people are trained better, they'll be able to assist and not get in the way of police and first responders. So we're working on all of these kinds of things. Are we there yet? No. We'll never be fully there. What you try to do is just continually improve. You measure it that way, because whatever comes along won't be what you plan for; it will be something completely different.

The Acting Chair: Just one last question. In terms of the Peterborough example, as you mentioned, they've done an outstanding job responding in Peterborough, and the citizens of Peterborough obviously have been getting all of our praise for that. You mentioned it was a 300-year storm. How often are these 300-year storms? Every 300 years. But have there been other communities that have been hit by—I've never heard of a 300-year storm. I've heard of a 100-year storm. That is pretty common, but—

Dr Young: That's exactly my point. What we were seeing is, we had this set of statistics on things like storms and floods and everything. The Red River was a 100-year flood, the ice storm was a 100-year ice storm and Peterborough's flooding two years ago was a 100-

year flood. So what happens two years later is that they get the 300-year flood. I heard somebody say, "What are we getting next, the 500-year flood?"

That's the problem we face with global warming and aging infrastructure. What we're going to see is more and more comments. The forest fires in BC. There are unprecedented forest fires in the Yukon this year. This is what we're seeing. The old figures of what's a 100-year event will no longer be a 100-year event; it might be a five-year, a 10-year or a 25-year event, and we have to start to mitigate and plan and prepare for exactly that kind of event. What we're going to see is going to be much bigger than what we saw before. That's exactly why I used those figures, so it would catch your fancy that we're seeing too many 100- and 300-year events.

The Acting Chair: I'll go to the official opposition.

Mr Hudak: Again, just some general questions. You talked, Dr Young, earlier in the presentation about the disaster that happened I think in the 1980s: Hurricane Hazel, the Malton plane crash, the Mississauga train derailment—

Dr Young: The 1970s. The plane crash was 35 years ago. Hurricane Hazel I think was before you were born.

Mr Hudak: I remember it.

Dr Young: I have the grey hair. I was born and I remember it.

The Acting Chair: Hurricane Hazel was Hazel McCallion.

Mr Hudak: That's what I thought the reference was to. She's still around. Sorry, the 1970s.

Mr Kormos: Bob Dylan.

Mr Hudak: Yeah, I heard of this guy. The Beatles played in Port Colborne this weekend, at Canal Days, as a matter of fact—a big success.

Dr Young, was the view at that time that the Emergency Management Act or whatever it was called at that particular time was adequate to address those situations, or did it go through a similar review and update?

Dr Young: Before that, Neil, how long—

Mr Neil McKerrell: Nineteen eighty-three.

The Acting Chair: Excuse me, just for Hansard's sake: That was Neil McKerrell, chief of emergency management in Ontario. Would you say again what you just said, Neil, into the mike so we can have that reported for Hansard? Just identify yourself.

Mr McKerrell: I'm Neil McKerrell, chief of Emergency Management Ontario. The Emergency Plans Act, which was the legislation before the Emergency Management Act, was brought in in 1983. There was nothing prior to that.

Mr Hudak: Was it in response to this series of natural disasters or was it just a—

Mr McKerrell: I was born then but I wasn't around in those days. It was a response, as I understand it, to the Mississauga situation and also to Three Mile Island, the nuclear event down in Pennsylvania.

Mr Hudak: The point I'm trying to put my mind around is some of the enumerated emergency powers that are listed. These are significant intrusions into civil liber-

ties: setting prices, searches without warrants, closing facilities, evacuation, as I had mentioned, mandatory recruitment and such. Obviously one would take extreme caution if we were to tread in these areas, if at all.

This is a gross generalization, but there seem to be two tracks here. There are the natural disasters that you seem to fear are going to get worse in their nature and frequency, and then you have manmade disasters like terrorism and bioterrorism. You might even want to put SARS in that category potentially, but pandemics are a bit of a new arrival—not since 1911 or what have you. There are two paths that the committee could go down. We could go down a path of better coordination, management and devotion of resources versus changing or updating the act to include more enumerated powers.

First, do you have any general advice on which path this committee should pursue with its limited resources? Second, is that path the right one for both natural disasters and acts of terrorism?

Dr Young: I think you need both. Certainly the amount of resources committed and the recognition of the risks that emergencies pose have been increasing in Ontario. We still have a way to go, but we're moving along that path. We're a lot further now than we were before.

I think the piece that we haven't done anything about is the emergency powers piece. I recognize the civil liberties and the issues that are raised and I treat them seriously. I would emphasize again that I think what's overriding them and what we have to remember is that these are powers to save lives. We need these things to manage and get control of an emergency and to save lives and, to a lesser extent, to save property and improve the quality of life for those who are in an ice storm situation, for example.

I think the extraordinary powers would only be used for limited periods of time in extraordinary circumstances with checks and balances and accountability there. I honestly believe that if they exist the chances of needing them are less, because I think the management is much easier.

The best example I can give you is that as the chief coroner, I had the statutory ability to call an inquest into any death in the province. There were parts of the act that talked about the need for people to co-operate. If somebody was not interested in having a meeting and settling things short of an inquest and I said to them, "Look, that's fine. But one of the options available to me might be to have an inquest. They're expensive and they take a lot of time and it'll be much more difficult. Or would you rather sit and have a discussion and see if we can work it out another way?", 99% of the time they decided that the best way to do it was to come and have a meeting. I rarely, if ever, couldn't somehow get their co-operation by pointing out that the statutory power was there if I needed it. I called an inquest where I felt it needed to be done. I said prior to the meeting, "If at the end I think there needs to be one, there needs to be one."

I see the act in very much the same way. The use of the powers is one element of an emergency, but it's an important element. If I'm sitting in the provincial operations centre and the river is flooding and somebody won't leave and I don't have any ability to say, "Get them out of there," frankly, that worries me.

Mr Hudak: So the advice to the committee is that if we do consider additional extraordinary powers in the act, we should not restrict them to an act of terrorism or bioterrorism versus a natural disaster. They should be broad-based.

Dr Young: No, because I can't tell you which will happen. Unfortunately, there are risks of both of them. Some of them overlap. Your good example was that you have trouble deciding on SARS because it could have been either. That's the world we live in now.

Mr Hudak: Again, if we do update the Emergency Readiness Act and put in additional extraordinary powers and if we model ourselves after other provinces, as soon as the Lieutenant Governor in Council declares that a disaster has taken place, it triggers all those enumerated powers?

1510

Dr Young: You could look at systems that require, for example, if there is time, and you always have to remember in an emergency, whatever system—even the declaration of an emergency right now requires the Premier. There are some acts that require a larger group of cabinet to make the decision, and that's fine as long as you can get the larger group together and as long as there's time to do that. So you have to put—what would you call it, a notwithstanding clause?—some kind of an override in, in the event that you need something. Even though the act has the extraordinary powers, it may be that the decision to use the extraordinary powers has to be made by a set group of cabinet, with an accountability mechanism to the Legislature later. But you've got to also recognize that it could be that there isn't time: It's the middle of the night and a decision has to be made. Then the next day, for example, I would become accountable back to cabinet, or the next week or whatever it was. It's the flexibility that has to be there, but I think the accountability has to be there as well, and the recognition that these are extraordinary powers.

Mr Hudak: That was my next question, actually. It would concentrate significant power, if we were to contemplate Quebec's or Alberta's or Saskatchewan's legislation—something similar in Ontario—in the Premier's hands or those of cabinet. So what accountability mechanism is there to the Legislature? Does it exist in other jurisdictions? Is that imposed with a super majority of some kind?

Dr Young: Generally what happens is that if you declare an emergency, there has to be a report back to the Legislature within a fixed period of time so that you get the accountability back for an accounting. But again, you don't want to be in the middle of trying to prepare the report back at the time when you're trying to manage the emergency. You want it timed so that it's accountable

and it's current enough but it isn't at the zenith of the problem, because you're awfully busy and awfully tired at that point.

Mr Hudak: Which I can understand, with the degree of concentration the cabinet would have to have with the problem at hand.

The Acting Chair (Mr Wayne Arthurs): That's 10 minutes. Maybe you can hold your next question.

Mr Hudak: Let me just finish this one, Chair. I'll be quick.

Mr Kormos: Give him one minute of my time.

Mr Hudak: Thank you.

Do other jurisdictions contemplate, whether it's in Canada or elsewhere, that beyond simply a reporting-back mechanism there would be some accountability mechanism where the Legislature as a whole would agree to the period, agree to the decisions that are made? Are opposition leaders brought into the process? Are there models like that? If we're going to strengthen the act, how can we strengthen the accountability of the government to other parties and to the Legislature as a whole?

Mr Lipman: There are different models like that. For example, some of the models provide that the declaration, while made by cabinet or maybe even a minister, if it were to be renewed, would have to be by the Legislature, or if it were to be renewed for a certain period of time, would have to be by the Legislature. In other words, maybe you could have one renewal by cabinet, but if it was going to be a longer-term extension of the declaration, then it would have to be by the Legislature. I think Quebec has that model.

Mr Hudak: The current limit on the term is how long?

Mr Lipman: It varies quite a bit. I think the Quebec one, since we're talking about that, is sort of 10-day renewals, but if it's for longer than 30 days, it must go to the Legislature.

Mr Hudak: Thank you, Chair.

The Acting Chair (Mr Mike Colle): Mr Kormos?

Mr Kormos: Doctor, I don't quarrel with your observation that, for instance, your power as a coroner gave you leverage, but, I mean, Tony Soprano could say the same thing, right? So, really—well, no, think about it. At the end of the day, your analysis is fine, except I think it goes backwards. In my view, it goes in the wrong direction.

Let's also observe that before the early 1980s we were functioning without a charter, so the sanctions regarding behaviour by authorities were somewhat limited. People could do things because there was little—again, I have no historical evidentiary support for this other than anecdotal. Police did things before the charter without repercussion because they could, because there were no repercussions other than internal disciplinary things. There was no litigation that could flow, for instance, or it was marginal and not very successful.

I see the lay of the land, in terms of the list of extraordinary powers that are being sought. Again, nobody disputes; without even examining them in a sophisticated

way with respect to emergency management, nobody doubts that. Quite frankly, police work would be so much easier if they didn't need warrants for searches, if they didn't have to abide by the rules that they do, for instance, in obtaining inculpatory statements, as compared to exculpatory statements. So I appreciate that, but is that really the choice? Is it really a matter of, "Either I have these powers or I don't"? What I'm worried about is that this is getting very limited to the wish list or the shopping list of these extraordinary powers.

Dr Young: Let's take the warrantless search, for example. That's a good trigger-button one, where you can say that there are dangers. There is no question there are concerns. There's a lot of case law about warrantless searches. What we're talking about here are situations where you're trespassing or doing a warrantless search as part of managing an emergency, not for purposes of criminal charges or anything else.

Mr Kormos: So give me a "for example" in real life.

Dr Young: OK.

Mr Lipman: One of the things we had talked about—and this goes back to why we need certain powers—was what the powers of the police are to evacuate somebody. We're not sure.

Mr Kormos: We're talking about warrantless entry. For the purpose of evacuation?

Mr Lipman: Yes, for the purpose of evacuation.

Mr Kormos: Hauling somebody out of their house?

Mr Lipman: Yes, to ensure that somebody has evacuated.

As you know, there's case law about entry in the context of responding to a 911 call. The cases seem to say there that you don't necessarily need a warrant because you're responding to a crisis. This is the type of entry without warrant that we're contemplating and powers that other jurisdictions contemplate as well.

Dr Young: So, trespassing, for example, along the same context: You have a particular area of a river that's going to flood a large area, and either the landowner is not home or refuses entry, and yet the failure to act in that one area may result in a huge problem further on.

Mr Kormos: But, for example, doing what? You want to have access to that property. There's a potential for flood. Give me a "for example." I really do have to get a picture.

Dr Young: I'm sorry, I don't understand the question.

Mr Kormos: There's a potential of a flood. You want to enter on to property.

Dr Young: Yes.

Mr Kormos: Why?

Dr Young: Well, because we may build a dike around that area. You may take action to save a community, because this is the critical place that's going to give. For whatever reason, someone says, "No, I won't," or they aren't home.

Mr Kormos: So why would the power you seek have to be warrantless? It seems to me you're talking about—

Dr Young: Well, that's trespassing there. But say you had to take an action where you've got to go into their

house for some reason, or the example of doing a search and someone's trying to avoid evacuation and they're hiding in their house. You may need warrantless entry in order to get into the house to get them out.

Mr Kormos: You can probably assume—my bet is that you've got judiciary that can act as the gatekeepers for these sorts of things. In the criminal context, the police use them with short notice in emergency situations all the time. Now, I appreciate you're not going to get 1,500 warrants to evacuate 1,500 people, but that's the evacuation, as compared to, let's say, building a dike or entering on to property to address a river or stream—

Dr Young: The evacuation, if it's either a torrent of water coming in the direction or a wall of fire—the phone lines are melted at that point.

Mr Kormos: I've seen the movies, yes.
1520

Dr Young: But you're going to have trouble finding and processing it at that point. Simply in practical terms, getting a judge to understand the situation and issue a warrant—I'm not sure they would have the power to issue warrants anyway because they issue warrants relative to the Criminal Code, they don't issue relative to emergencies.

Mr Kormos: The Provincial Offences Act allows for some level of judicially supervised intervention, doesn't it?

Dr Young: I'm not sure. I defer to any lawyer, but I don't know that a judge can overcome these powers if they don't exist somewhere in a statute.

Mr Kormos: You'd need a legislative basis, of course.

Dr Young: That's the emergency act.

Mr Kormos: I appreciate there are circumstances under which it is totally impractical—the wall of fire, the raging river—but you haven't talked about judicial gatekeeping at all.

Dr Young: It exists, for example, in the Health Promotion and Protection Act. There are three levels of quarantine. There's a verbal level; there's a letter from the MOH, which is a section 22 order I believe; and then there is a judicial order which requires the police to come and take them and then they go to wherever it is chosen that they go. It might be a hospital, it might be a jail or whatever. So there are models for that. In that circumstance, it's a step-by-step process and the judicial order is only at the most severe and it's worked its way up to that. But that's what you're talking about and it does exist, certainly in that act.

Mr Kormos: You see, one of the problems then is that I don't think you can talk about these things without talking about, as Dr Young says, various degrees or stages: somewhere, again, for the purpose of contemplating it, the level of urgency is so high that it requires immediate action. In that respect we're going to get legal advice as to what extent, I suppose, the common law protects—because that's really what you're talking about, protecting the actor who violates the integrity of the property or the integrity of a person's home or the

integrity of that person's body. But then there are other situations with varying degrees of urgency where you may want judicial supervision, but then that makes me recall the legislation—you'll remember this, Tim—that the last government passed around abused women, which was intrusive and permitted summary removal of abusive partners from the household; you might recall that as well, Chair.

The bill passed. There were all sorts of caveats raised during the hearings about the adequacy of the staffing of justice of the peace offices. The bill was never proclaimed, because one of the fundamental problems was that we just didn't have the judicial personnel out there to make it work the way it was intended to work. So I'm thinking about a situation that the doctor is talking about where you could well want to have a level of intervention which would have attached to it judicial supervision and then, holy moly, you get into the whole question of the adequacy of staffing, for instance, of justices of the peace alone, never mind competence. Lord knows, that's an issue in and of itself, in view of the crass political patronage that tends to accompany those hack appointments. It's interesting, and you're saying that that is yet another consideration, then, for this committee. If it's going to talk about that sort of stuff, it's got to talk about the ability of the bench to perform that role. Thank you kindly. Again, I appreciate what you're saying.

Dr Young: I know that.

The Acting Chair: No doubt we will be addressing that very thing, hopefully.

Mr Zimmer: I just want to get this in some historical perspective. I understand that there was an Emergency Measures Act, 1963. It basically dealt with what we were going to do in the event of a nuclear war or a war situation. That got repealed in 1976. Then there was an Emergency Plans Act, with the emphasis on plans rather than powers, in 1983. That was preceded by a white paper consultation by Solicitor General McMurtry at the time. That followed the Mississauga train derailment in 1979. There was a comment in the white paper which addressed this issue of special powers. The comment from the white paper was: "We think it preferable that the common law powers of police and other emergency personnel continue to be delineated by the courts and that the emphasis on the draft bill focus on planning," and of course, by implication, not on additional powers. I think it would be helpful to the committee to have your thoughts on that perspective, on the 1983 white paper, because we're moving from scenario A to scenario B here.

Dr Young: I think the number, the risk, the magnitude and the complexity of emergencies has changed. It speaks volumes that what we were focused on and what everyone else at that time was focused on were plans. It didn't talk about training, it didn't talk about exercises and it didn't require them. Until our recent amendments, municipalities weren't required to have plans. Most did, but not everyone in Ontario did.

Things have evolved and the thinking has changed dramatically, but so has the society. The ability of people to follow direction and do things and to argue about things has changed the whole societal attitude. My own thinking would be, thinking back to that age, it would be a whole lot easier to manage some of these things than it is now. It's just a different time.

Neil, do you want to add anything?

Mr McKerrell: I've never seen that to which you're referring. I've never heard of it. What I was started off with was the Emergency Plans Act. So my apologies for the incorrect information I gave you before.

Mr Hudak: Good research.

Mr McKerrell: Yes, indeed.

In terms of the progression, I think Dr Young has it exactly right, and that is that we're living in far different times now than we were then. Ontario has been really very blessed. We've lived in relatively calm times and we've been very fortunate, notwithstanding Hurricane Hazel and the ice storm and so forth. You can look at other parts of the world, other jurisdictions, and see that they've had to contend with far more than has Ontario.

When we started looking at the situation in Ontario back in 2000, we did comparisons internationally, at both the Commonwealth and the state level. We looked at Australia. We looked at New Zealand, the United Kingdom and the 10 largest American states being most comparable to life in Ontario. That was where we began to realize that we've been living a very comfortable existence here in Ontario. It begs the question, how long can we get away with that? So as times have been changing, it became clear that we'd better do something different.

Mr Zimmer: Unrelated to my work at this committee, I was at a convention these past few days in Madison, Wisconsin, sponsored by the council of state governors. It was all the Midwestern governors: Michigan, New York, Illinois right through to Minnesota and so on. They had a publication which they've produced which is a summary of how all those states handle this question of emergency measures. They call it emergency measures. They have indexes and lists of powers and a comparative analysis of how each state deals with these issues that we're discussing today. I recommend that for your—

Mr McKerrell: Is that the governors' guide?

Mr Zimmer: Yes.

Mr McKerrell: There's a book put out by the governors' association in the States. It's quite good. We have that.

Mr Zimmer: Oh, you do.

My last question is, if there were to be additional emergency powers and so on, one of the things we have to be mindful of is the checks and balances, so that nobody goes off on a toot. I don't mean any disrespect when I say that.

Dr Young: I'm not going to be here forever.

1530

Mr Zimmer: The inherent conflict there is that dealing with an abuse of an emergency power necessarily follows the exercise of the power, so it might be months

and months after the misuse of power where somebody is going to have to chase down and do something about it. If we move in this direction, we'll have to give some real thought to the mechanisms in place that would serve as the checks and balances. Have you given any thought to an approach to how you would build in the mechanisms and the types of mechanisms and how those protections would function or operate?

Dr Young: We've had discussions among the bureaucracy about these things and the need for them and we've debated among ourselves how soon should report-backs be, how extensive and at what level. I think everyone agrees they should exist; it's simply a question of how often you make it so and whether or not—I think you have to pay attention to it. It should be at a time—and I don't pretend to have all the answers—that it is a check and balance and it's there but it doesn't impede the management of it, so that it doesn't become such a big process that you become devoted to that for a few days instead of paying attention to what's going on.

I think ideally you want to keep it out of the political sphere as much as you can. Obviously there is political accountability, but personally, I worry, particularly in a situation, for example, if you had a minority government, as to whether or not an emergency could more easily become a political football and what are the repercussions of that, because you're moving off your point. The point of managing it is to manage it from a public safety point of view, using ethics as your guideline. If you stay on that principle, it doesn't say anything about politics in my mind, so you want to stay out of that sphere.

I don't pretend to have all of the answers. I think that would be the consideration I would ask of the committee, to recognize that you want the right thing being done for the right reasons. It's very important because what's at stake is human lives.

Mrs Sandals: Dr Young, if we could go back to the theoretical flood we were talking about, the more I listened the more I thought—as Mr Kormos discussed the possibility of different ways in which the bench could be involved, perhaps he was actually selling me on emergency powers. I would think of perhaps a theoretical scenario where you've got a flood, perhaps you're expecting the river to crest in the middle of the night and you don't know whether there are families sleeping with small children or whether you have elderly people who need assistance to leave their home. So in fact the powers of evacuation and trespass aren't necessarily hostile to the people you're helping. You need to attract people's attention in the middle of the night when they may not be paying attention. You might even theoretically have the situation where someone who is resisting evacuation has children in the house. It's not just the person who is resisting evacuation; they may be endangering the lives of others. So I can think of scenarios where the emergency power to evacuate or trespass would be very useful.

What I am struggling with is the system that you outlined earlier, where emergencies are first local and, in the case of the Peterborough flood, it only involves an emergency situation in a limited number of municipalities. How would you be invoking that emergency power if the emergency has only been declared at the local level? Or are we thinking that you would need some way to escalate a local emergency to the provincial level in order to drag the provincial powers—

Dr Young: That's what I would recommend.

There are two models to what you say, and your point is absolutely correct. Right now, the head of council can declare an emergency. Sometimes that's good and sometimes that's bad. Sometimes we have trouble getting the heads of council to declare an emergency and sometimes we have them calling it for what turn out to be either political or very trivial reasons.

I would not necessarily think you would want to vest a local council or a local mayor with all of the extraordinary powers that are at the provincial level. I think if it's that necessary to use them, you'll want the cabinet involved at that point in time. My own preference would be that at that point, in order to use them, it would escalate to a provincial emergency, and the use of the powers would be part of that.

Mr McKerrell: And you can localize the provincial emergency.

Dr Young: Yes, you can localize a provincial emergency. When you declare an emergency, you generally define it. You would define it as being involved in regards to the flood of the Grand River in such and such an area. Your powers would be restricted accordingly then.

Mrs Sandals: So the current definition of invoking an emergency already allows you to say that this is a provincial emergency being invoked but it's localized to a certain jurisdiction. That already exists. Would I be correct in assuming, then, that your concern around the Emergency Management Act is not so much the way in which we declare an emergency but what follows in managing the emergency; that the current procedure or definitions which allow you to get to an emergency are working adequately, in your opinion?

Dr Young: Yes. First of all, it's very hard to define an emergency. Second, in my view, it's relatively unnecessary because at the time it's not the hardest decision. If your hardest decision is whether you have an emergency or not—

Mrs Sandals: It's not an emergency.

Dr Young: Yes. You can figure it out.

I would not put the powers too broadly. Once you do it, I think if you're going to give extraordinary powers—and I recognize I'm also arguing that you don't define them too tightly, because if you define them too tightly you'll end up with powers which don't fit the situation that actually happens. So you'll end up thinking you fixed it and then it will turn out that you didn't. You defined it wrong.

I think if you're going to trust those sorts of powers, you put the checks and balances in and you put them at a

high level of government as one of the protections as well.

Mrs Sandals: We've talked a lot about the Emergency Management Act but we've alluded to the fact that there may be other related acts. Are there specific acts that we should be looking at, in your opinion? One that occurs to me is around the whole issue of public health and diseases.

Dr Young: I think one of the things the various ministries that will appear before you will talk about is the Health Protection and Promotion Act. Health has a number of issues that they're concerned with: environment, because of the dumps with avian flu.

Again, to go back to my own experience, the Coroners Act was very useful during SARS. It became very important on occasion to order an autopsy to establish whether or not someone had SARS, because our whole method of managing the outbreak depended on whether this was a viable arm to SARS or not. We were probably all right, but the simple insertion in the Coroners Act of a clause saying that one of the purposes of a coroner's autopsy can be for public health determination resolves that. Then there's no issue any more as to whether that's a good and proper purpose—and it's relatively simple. As I said, in SARS we did it, but somebody could argue that we didn't have the right to do that.

1540

Mrs Sandals: Just one final question: You've referred to the emergency planning that goes on at the municipal level, and three different levels. Could you outline for us the three different levels of emergency preparedness, what the deadlines are for those and where generally municipalities are in terms of their preparation? The man with the data.

Mr McKerrell: Some of it.

There is so much work to be done to bring Ontario up to a level that would be considered consistent with international best practices that it was simply broken up into chewable chunks, if I can put it that way.

The first chunk is to bring everybody up to a minimum acceptable standard that we call the essential level. That applies, by the way, to all 446 municipalities and to the provincial government as well. That's supposed to be achieved by December 31, 2004.

The next level is enhanced, and that raises the bar. Again, it applies to municipalities and to the provincial government. That's to be achieved by December 31, 2005.

The third level is comprehensive, and that's to be achieved by December 31, 2006, by which time there will be a new standard brought out in North America, principally in the US, the NFPA 1600—National Fire Protection Association—which covers emergency management. That is becoming—it's not there yet—the North American standard for best practice. By January 1, 2007, there will be the latest version of that put out.

We're involved in the standard-setting body for that group, EMO is, and we believe that, of those two levels, the comprehensive level achieved by December 31, 2006,

will be very close to that new level that's coming out in January 2007. If there's any tweaking that's required, we're allowing an extra 12 months to get the tweaking done, so that by December 31, 2007, we should be right up there.

Mrs Sandals: Dr Young made reference to the fact that Peterborough was ahead of the deadlines, that it was already at the enhanced level. Are a number of municipalities in that situation?

Dr Young: I didn't say necessarily they're at the enhanced, but certainly in terms of the planning and their coordination and their approach they were—

Mr McKerrell: They've done a good job.

Dr Young: They've done a very good job, yes.

Mrs Sandals: They're ahead of the game compared to some.

Dr Young: Yes, they are quite enhanced.

The other thing I'd add to what Neil said is that what gets added as we go along is that your basic plan then starts to get into more and more detail around risks. So it's the risk piece of the work now. The first piece then is for them to identify the risks. The next piece is to start to write more detailed plans and to work out all the local critical infrastructure. So as we go through the various levels, that's the kind of detail that's never been there that gets added.

Mr Arthurs: Dr Young, I don't want to get into the minutiae at all, but looking at the various areas in which powers would be considered, in my limited experience with some emergency situations, either actual or planning strategies, one of the fundamental problems tends to become one of communications. We've had communication systems either break down or overload. Is there a need for the ability to get primary access? Is it practical even to achieve that from an emergency planning standpoint? In the blackout situation we managed to work up until our BlackBerry's crashed on the system, and I know we tried to do some nuclear emergency planning when communication networks broke down. The practicality of it—and that's why even bringing the public into play—

Dr Young: If you look at the write-ups of any emergency there's always a chapter on communications and it always talks about how it broke down. It's a big problem.

We're approaching it in a number of ways. We're trying to add to our Internet ability and give more information on Web sites and update that way. From SARS, for example, we're looking at it being able to give more information out to professional bodies because you've got the need to educate the medical people at the same time as you're educating the public. We're looking at different means of getting it.

We've got a ham radio set up right in EMO. We've got satellite phones. We've got BlackBerry's now. We've got cellphones. We're buying a cache of radios that operate as a unit, as a system, and we've got them stored and ready to mobilize so that we can give them out to people within government on a regular basis.

Mr Arthurs: If I can stop you for a second, rather than that level of practicality, I'm more interested in

whether or not, as in the hydro blackout, there's a need for emergency operators of all sorts to be able to take over capacity in the overall system so that the system stays up for the purposes of emergency communications. What we saw happen was that the capacity to communicate broke down because the overall system was loaded to such a degree that we no longer had reasonable access to it. Public demand for general information was so great that the capacity to manage the system was impossible.

Dr Young: Yes, we need to do more work on that, both at the communication—I mean, that certainly happened in New York. They lost capacity when the World Trade Center went down and then everybody turned to their cellphones and they blacked the system out by doing that. It's a big problem and I don't think we have the solution at this point.

Mr Hudak: A quick question, just making sure I was clear on Ms Sandals's enquiries. The emergency powers that you're asking the committee to contemplate would stay resident at the provincial authority?

Dr Young: That's right.

Mr Hudak: They wouldn't be at the municipal level or be able to be delegated to the municipal level or anything like that?

Dr Young: No, we don't see delegation as being necessarily feasible or desirable.

Mr Hudak: We haven't talked as much about the mitigation and prevention part of your presentation. I'm particularly concerned about terrorism and bioterrorism. Is Ontario currently a target of terrorism?

Dr Young: There's no specific threat against Canada, period, including Ontario, but there's every reason to believe that with the capital city, with the largest city and the economic centre, with the Ambassador Bridge and with the bridges in the Niagara region, all of those could be terrorist targets. If I was going to rank Ontario versus the rest of the country, I'd rank Ontario first by a long way for terrorism. So if there was going to be an act in Canada—and one has to look and say there have been acts in Madrid, Spain, and there have been attacks on British interests in Turkey. Certainly, walking down the street in Bali, I was acutely aware that that was aimed at Australia. Is Canada's name on the list? We're in Afghanistan. We're seen as a western society that's too close to the United States and Britain and other places. So it's our belief that while the US risk may be greater, if it suits the terrorists' interests, they'll be here too to send a message. You're seeing that kind of approach right now in Iraq, where they're going after people of multiple nationalities to send political messages to get even small delegations of a few hundred troops out. They kidnap somebody to get them out of there. It just destroys the coalitions.

Interjection.

Dr Young: Yes, that's right. Neil points out that Canada is the only one on the hit list that hasn't been touched, in fact, at this point.

Mr Hudak: So our number may be coming up shortly?

Dr Young: We hope not, but—

Mr Hudak: The likelihood could be either just to strike against Canada in general for its support of the war against terrorism or as a way of getting at the States indirectly.

Dr Young: Exactly. You've got critical infrastructure—hydro lines, computer systems, gas and oil lines—that are inextricably linked. So you could indirectly get at the United States by getting at Canada. Bridges and tunnels, all kinds of—we're so integrated.

Mr Hudak: Aside from the emergency act itself, does the province or your ministry have enough authority to try to do prevention and mitigation of these losses, ensuring that proper security exists around these targets that you mentioned? In your opening discussion you talked about the chemicals gathered in population centres, in the Sarnia area. Should the committee consider any additional powers outside of the emergency act or is it adequate today?

1550

Dr Young: I think some of the talk we've had about the odd piece of other acts being strengthened—the Coroners Act is an example that I gave you. I think that kind of inventory is worth looking at, for sure.

I think the question or the issue in all of this preparation is that it's not only having the statutory power but we have to have the will. We've got to put the resources into it and we have to actually get on with it. Certainly that's what we're pushing: to move the ministries and move emergency management up in the priority of the ministries as well so that it isn't something you think about when something has happened; instead, you think about it because it's going to happen and you'd better get going on it now.

Mr Hudak: So it's more an issue of resources and coordinating those resources as opposed to the need for an additional authority at the provincial level to make these things happen?

Dr Young: Yes. There are some legislative changes that could be made, but I think both are necessary. I think we need to make it paramount in our mind. I don't say that from the point of view of trying to be a scaremonger, because that's not my approach to life. I think you do sensible things. You're not going to prevent drownings by building fences around every river in Ontario. That's a good example. I think we have to be sensible, but I think we have to recognize that the risk of there being emergencies is infinitely greater than it was before. As we've said, we've lived a charmed life but it isn't going to continue forever, so we'd better start thinking about that and looking at it, starting with mitigation, in a whole lot different way than we did before.

Mr Hudak: Back to—you have additional information? Sorry, go ahead.

Dr Young: Yes. Neil was pointing out to me that a really good example is critical infrastructure protection. About 90% of critical infrastructure—and that would include things like the CN Tower, bridges, the Ambassador Bridge, some of the tunnels, the pipelines—is in

private hands. We had no system. We didn't even have an inventory of it at one point, let alone going into the private—we have to learn to work with private industry and get them to acknowledge that it's in their financial interests to do this work. But we also have to provide some expertise and guidance about where to spend money and where not to spend money and how to integrate their efforts, for example, into policing in their community, so that the police are aware of what they've done, approve it and work with them to make it the best bang for the buck. That's all new stuff.

Mr Hudak: But you're satisfied that existing provincial systems and legislation allow that to happen and we don't need any additional powers to compel that?

Dr Young: Yes, we're moving in all the right directions with the act except for the powers part.

Mr Hudak: With respect to terrorism and bioterrorism, are there currently terrorist cells in Ontario, in our country?

Dr Young: The answer to that would be that the outgoing director of CSIS recently acknowledged—I think it was in sworn evidence—that there were terrorist cells operating in provinces, including Ontario.

Mr Hudak: What role does the province play in trying to get intelligence, to ascertain if that's the case and to put a stop to it?

Dr Young: I think there has to be a recognition that some of the best intelligence starts at the ground level, so municipal police and the municipalities can play an important role in gathering information. There also needs to be a return of that information back to both municipal leaders and provincial leaders. I think the issue of intelligence is much broader than just the police community. There's a recognition that emergency planners, ambulance, fire and others have to know about the risks as well. It makes a big difference to me. If there was a credible risk to Toronto, I may decide to postpone a vacation. If nobody tells me about it and I'm half a world away in the jungle and you can't reach me, it's sometimes that simple. If I'm aware of something and I can start to turn my mind, and then it actually happens, I'm going to be that much better at the beginning. So it's the sharing of that that we're learning to do. The province is pivotal in that, because we're the central player.

I think we've been working a lot. My mandate has been to do that sort of civilian intelligence piece, to do the emergency management advice in planning and management, but also to pay attention to the borders. It's that combination, I think, that's actually a very good model. You're seeing it in homeland security, but with less attention on the borders and more on the intelligence and the emergency management and putting it together. We've actually done all three, and I think it's actually a very good model. You're seeing that and Ottawa is starting to duplicate it as well.

Mr Hudak: With respect to mitigation and prevention, do you feel that adequate authority currently exists in the province to investigate and root out terrorism that may exist in Ontario?

Dr Young: Yes, I think the acts are there, and I think a lot of it is coordinating the information, making sure there's not duplication and sharing it. It's not perfect, but it's come a long way.

Mr Hudak: You had spoken a couple of times about Australia. You talked about Bali and you had mentioned some of the things Australia and New Zealand have recently done on emergency preparedness. I took that in the context of terrorism and bioterrorism. I may have misunderstood that connection. What are some of the lessons from Australia and New Zealand that we may want to incorporate here in the province of Ontario?

Mr McKerrell: The interesting thing about Australia is how proactive they have been in the field of emergency management. When we started looking at it in 2000, we discovered that they were probably 10 years ahead of us, and that's a country with 20 million people. New Zealand, a country of four million people, had very elaborate emergency management legislation. So as we were looking around, we were looking for examples of whether Ontario was well placed to deal with the risks.

In fact, what we did first of all was take a look at the risk environment in Ontario. I won't get specific, but there are other provinces in the country where you could take a look and say, what are the risks there and what is the emergency management spectrum, and the spectrum to deal with emergencies in that particular jurisdiction is quite adequate. But when we looked at the scope and range of risks to life in Ontario as we know it, then we felt that where we were was a long way from where we needed to be in the public interest. That was reinforced when we looked at places like Australia, New Zealand, the UK and the 10 largest American states.

We avoid comparing ourselves, in some ways, to the States, because they have such a different regime. As Dr Young pointed out, the American federal government pours a great deal of money into emergency management at the state and, particularly, the local level. That just doesn't happen in this country. So depending on what you look at, you can get a very skewed picture of where Canada and where Ontario are vis-à-vis the money that gets invested in emergency management.

Mr Hudak: Just one last sort of general question to help us for the committee, and that was the issue of the border and border security that I had brought up in my opening comments. We had an orange alert this weekend, we had line-ups of significant time at the Niagara crossings; I would expect at Windsor and Sarnia as well.

So access to markets, the impact on trade and tourism, the detrimental impact on our economy, the growing Fortress America, and if there were another strike in the States, it would no doubt get worse along our borders. That having been said, we, as Canadians, have a duty to make sure we keep our borders safe. What's your advice on the role Ontario can play in trying to remedy that issue about a free and open border for the access of goods and services while at the same time strengthening the security of North America?

Dr Young: When you get involved in any of the border issues, as you're more than aware, you're now dealing with three levels of government in two countries plus private interests, so you've got an enormously complex pot. Many of the cards and the powers and authorities lie at the federal level, but there are things we can do.

I think we've discovered in Ontario that we can, for example, put together the truckers, the manufacturers, the Ministry of Transportation, the police and other interested groups and say: "OK, if the border isn't working as well, can we have marshalling yards? Can we get the exchange of information? Can we put out an Internet site that has wait times and is accurate and updated on a regular basis?" We've done all those kinds of things.

1600

We can also enter into agreements with the federal government in municipalities like Niagara and Windsor and try to improve the physical infrastructure at our end of the bridges. Unfortunately, we're captive sometimes to bad infrastructure on the American side, but we can at least do that. Then we can put pressure on, either through the federal government or through the States or sometimes directly with the American government, and have done it on things like increasing the manpower at the Canadian border to reflect—for a while the Americans beefed up the Mexican border and didn't beef up the Canadian border substantially. So part of the delay was a manpower problem. We directly went and put pressure on them about that. We worked with the Bureau of Alcohol, Tobacco and Firearms on projects to try to have more joint operations. We've worked on things like FAST and the 30-point plan.

Part of our theory has been to put pressure in several places, and sometimes we've put pressure on the American government to put pressure on the federal government here to do certain things that will help us with our interests in Ontario. So we've come at it from all angles and tried to be a facilitator and work with industry as well.

Ms Broten: You made mention of some best practices. Obviously, this is the first day of many when this committee is going to be looking both in Canada and in North America generally. I'm wondering if you can highlight for us some jurisdictions that you think can provide to us some best-practice guidelines or identify experts in North America who you believe have a perspective that we can examine and whom we may wish to call as witnesses before this committee.

Dr Young: I'll see what Neil thinks. If I was going to add provinces, for example, Quebec, British Columbia and probably Alberta are the three provinces I would look at the hardest. I think for a small province, Nova Scotia has done very well with some emergencies. What's interesting in the Nova Scotia model is that they've integrated well with the federal government in their operations centre and such.

State-wise, Ohio comes immediately to mind, for a number of reasons. They've been very active. They also

have a number of nuclear reactors and they're fairly similar to us as an industrial base. New York and Michigan are the obvious other ones, both for their proximity and sharing the border and potential MOUs for agreements, but also for the work they've done. We've done a considerable amount of work with those states and meet with them quite regularly.

Other countries? Well, I think the best models we found were Australia and New Zealand.

That would be the group. I think you'll find them quite receptive and quite helpful.

Ms Broten: I understand from doing some reading that California has specific requirements with respect to evacuation because of earthquakes and forest fires. Do BC and Alberta also have those concerns, primarily significant concerns? I understand they somewhat replicate the California legislation.

Dr Young: I know BC has a concern about evacuation, because I saw a presentation. BC came and talked to us about the forest fires, and the issue of evacuation came up in that presentation. So I know they've been thinking a lot about that.

Ms Broten: I understand that the UK recently launched a major public awareness campaign with respect to emergency preparedness. It has received mixed reviews. I wonder if you had any comment with respect to that level of public awareness campaign. Is that something you're looking at, anticipating, or what were your views with respect to that?

Dr Young: Well, it takes budget, and theirs was set up I think primarily around terrorism. I think the criticism I heard was were you scaring people needlessly about terrorism. Personally, I'm of the school that you can't give people enough good information, and they'll learn to manage it and be OK. I would suggest we need an overall awareness of preparedness, including an element of terrorism, but we've got a long way to go for all of us getting water and food and windup clocks in our homes and being able to self-sustain. One reason you might need it is because of terrorism, so I would probably personally go at it that way.

I think the area is ripe. We haven't had the money and the federal government hasn't gone at it in a big way. I think we have to find a way to do a better job. It's partly about money.

Mr McKerrell: I can add a little bit on that. Post 9/11 in the US, everything was terrorism this and terrorism that. The emergency management community in the US has moved away from terrorism-specific stuff to recognize, quite openly, that terrorism is but one risk. They realized that they were too focused on terrorism.

I absolutely agree with what Dr Young has said, and that is that the focus shouldn't just be on terrorism; it should be on public safety and what all the risks are that impact on public safety, of which terrorism is but one.

Ms Broten: You spoke about the importance of mitigation and prevention. I'm wondering whether or not you saw that any of the additional powers would come into play at that early a stage, in terms of mitigation and

prevention overall, as opposed to once a declaration of an emergency has been made.

Dr Young: I don't think so, other than—well, it could; not the Emergency Management Act. But if there were changes to some of the ministry acts, it's possible that they could play a role in mitigation. If you're acting proactively, as we were, for example, with the avian flu—having all of these meetings and doing things—and getting in front of it instead of waiting for the emergency to gather the group together, certainly there's the potential that you could use a power that existed within an act, but it would be a lesser power. You would use that power as part of the management that would either stop it from coming or stop it earlier.

I guess the best example would be that we happened to be meeting about avian flu the day that we had the scare in Niagara Falls a couple of weeks ago. When it happened, we didn't even have to gather everybody together, because we were already in the same room. In a perfect world, with all of the right things in the act, if that had been avian flu, we might have used some of the new powers to dispose, for example, of the birds, but we may have been able, by being proactive, to have confined it to being on one farm and one farm only. So I would see that there's the potential of using something like that.

Ms Broten: One final question was with respect to the fact that you indicated that you didn't see the powers being delegated. That's what you said earlier?

Dr Young: Yes.

Ms Broten: OK, I didn't misunderstand. I guess I don't see how that will play out. In my understanding of an emergency, those persons who would be enforcing these—if we talk about regulating or prohibiting travel, for example, an order would be made, but it would be someone on the ground in a community across this province that would be implementing that act.

Dr Young: Yes, that's the difference. You're absolutely correct. That's a great question. It's the difference between using the power initially and then operationalizing the use of that power. They're two different problems. If cabinet decided, for example, that evacuation was necessary in an area, then one of the things we have to do is find a way of operationalizing that, so that every time somebody needs to be evacuated or an area needs to be evacuated, we don't have to wake the Premier up, for example. It needs to be at a level, and there has to be an operational responsibility. Once the decision to do something is made, presumably the beginning of that operationalizing starts with me, and then I would delegate down only as far as needs to be delegated down, depending on the nature of what it is.

But you don't want all of that granular decision-making being done by a politician and every time that you're using the power it has to come back up to the political level. You're never going to get anything done. It has to fall down lower in order to make it work. It has to be done very carefully in order to ensure that it's practical and workable but it's not so encumbering that

by the time you get the approval, the flood has already gone through or whatever.

Ms Broten: Similarly, there's the concern that Mr Kormos raised—

The Acting Chair: If you could wrap up, Ms Broten.

Ms Broten: Sure—with respect to the rights of individuals. Certainly we know that various acts of police officers—the legislation that provides for it isn't unconstitutional, but the conduct at the ground level is problematic. I wonder if you've turned your mind to those checks and balances that you're talking about at the very local level.

Dr Young: I think you would be very careful about using too much of that at the local level. I think much of it would flow back to the province at a senior level. If you're going to use the extraordinary powers—I agree with you. The concern is that if you put it to too many people too far down, you're going to get into problems because they're not going to be aware of the fact that they're using an extraordinary power, and they may not be trained in it and they may not turn their mind to it when they're using it. I think that's a very real concern, but it can't just be left in political hands or it becomes

impractical as well. So the question is, how far down the chain do you go at the operational level?

The Acting Chair: I know that Dr Young has agreed to come back, and we wish that you will come back. We will notify you. I want to thank you on behalf of the committee for being so accommodating and spending all this time with us today. It has been very informative and very helpful as we go down the search for better preparedness in Ontario.

Do we have a motion to have Dr Young come back?

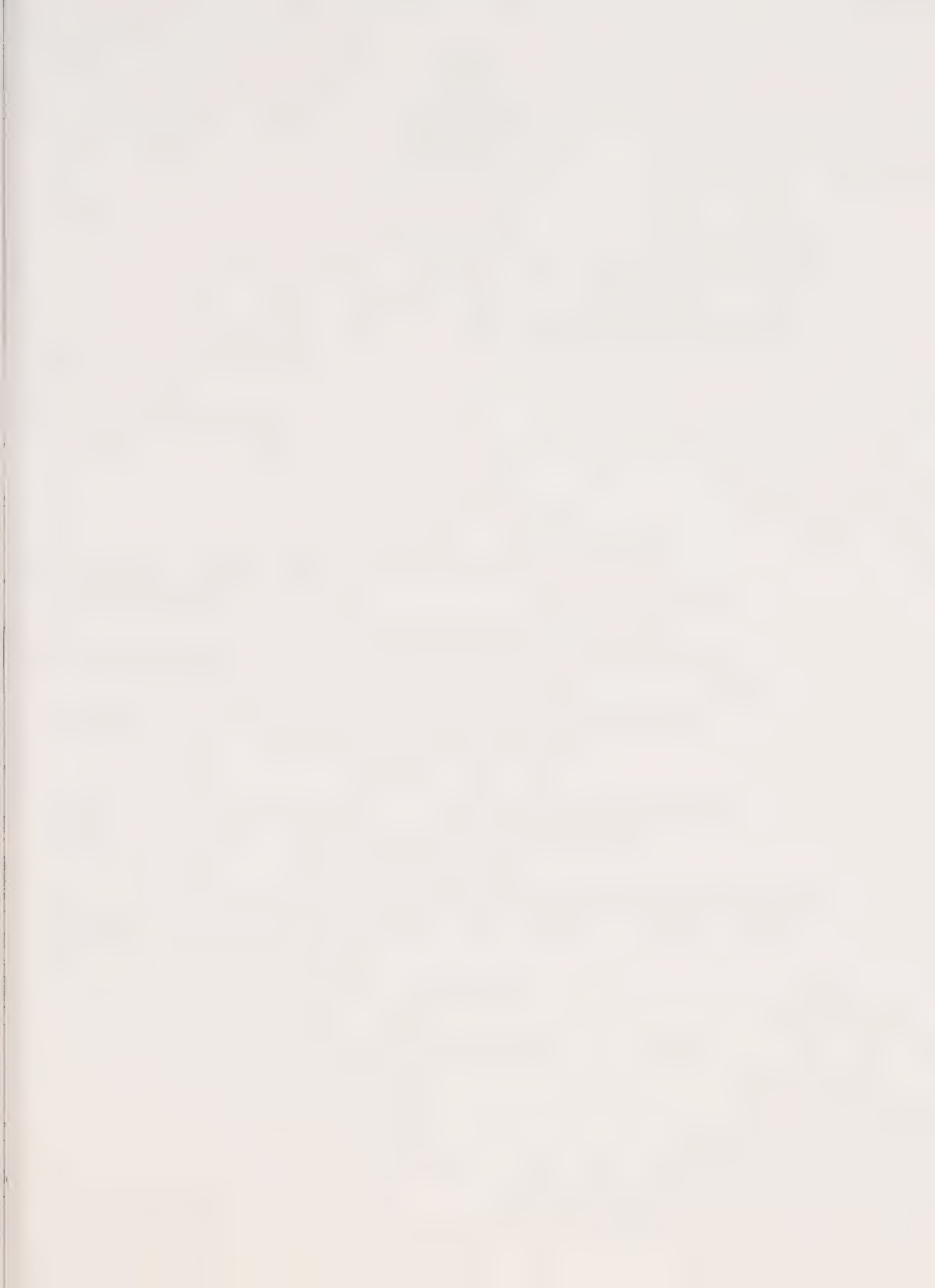
Ms Broten: Certainly. I'd make a motion to invite Dr Young back to provide more advice and insight to us at a later date.

The Acting Chair: OK. I'd also like to thank Neil McKerrell, the chief of Emergency Management Ontario, and Jay Lipman, general counsel, legal services branch, for coming.

Again, Dr Young, we really appreciate your insights. On behalf of the committee, we look forward to talking to you again.

We're back here tomorrow at 10 o'clock. The committee is adjourned.

The committee adjourned at 1613.



CONTENTS

Tuesday 3 August 2004

Subcommittee reports	JP-4
Emergency management statutes review	JP-7
Ministry of Community Safety and Correctional Services	
Dr James Young, Commissioner of Emergency Management	
Mr Jay Lipman, counsel, legal services branch	
Mr Neil McKerrell, chief of Emergency Management Ontario	

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Journal des débats (Hansard)

Mercredi 4 août 2004

**Standing committee on
justice policy**

Emergency Management
Statutes Review

**Comité permanent
de la justice**

Examen des lois ontariennes
sur les mesures d'urgence

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 4 August 2004

Mercredi 4 août 2004

*The committee met at 1005 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): Ladies and gentlemen, the standing committee on justice policy, dealing with emergency preparedness, will begin our second session here this morning.

Just to let members of the committee know, we hope to convene a subcommittee meeting later on this afternoon. We are also putting together panel round tables based on different sector interests, and we'll let you know about the clusters. I will be doing that with the clerk this afternoon. We're going to do something very impressive with these panels that we'll be setting up whereby we'll have expertise from emergency services maybe on one panel, like police, fire, the EMS; we may have health providers on another panel. They'll be participating at the same time with members of the committee. So that will start next week, I think, Mr Clerk?

The Clerk of the Committee (Mr Katch Koch): The 16th.

The Acting Chair: The 16th, because the committee's not meeting next week.

MINISTRY OF AGRICULTURE AND FOOD

The Acting Chair: The first deputants today in helping us to review emergency management statutes in Ontario are from the Ministry of Agriculture and Food: Don Taylor, assistant deputy minister, research and corporate services division; and Dr Maurice Bitran, director, innovation and risk management branch. Thanks for being here.

For the members of the committee, we are noted here as having 20 minutes. What I'd like to do is probably extend that to at least a half-hour, because we have some time here. Mr Taylor and Dr Bitran, we can go with your lead. In other words, if you'd like to leave 10 or 15 minutes at the end for questions, it's up to you; there's a bit of flexibility there. I'm sure a lot of interested committee members will ask you questions, so I hope you leave some time at the end.

1010

Mr Don Taylor: Thank you, Mr Chairman. It's our pleasure to be here to provide you with some information

as it relates to our area of responsibility in emergency management, and that's the food and agriculture sectors.

I understand Dr Young was with the committee yesterday and spoke about the issue. I know he would have made some comments on the four pillars of emergency management: mitigation, preparedness, response and recovery. I guess it's our assumption in trying to put together comments for the committee today that you would be particularly interested in response, but I'm sure you recognize that the other phases are also important. I think Dr Young would also have referred to the fact that in the case of some emergencies there are cross-jurisdictional issues, federal-provincial issues and so on. That's particularly relevant in our area, so we'll be referring to that on a few occasions.

I've got some slides here and hopefully you've got a copy of the slide deck in front of you, but I'll try to move through these fairly quickly and, as the Chairman has suggested, try to leave a few minutes for questions at the end.

The purpose of this first slide is just to give you some idea of the size of the agri-food sector in Ontario. I know Dr Young had a few slides on "Did you know that...?" Well, I guess this is a "Did you know that...?" slide as well that, besides being a sort of centre of population and industrial capacity for Canada, Ontario is also a major agri-food contributor, particularly on the food side, where we represent some 40% to 45% of the Canadian total in terms of food processing and food production capability.

The second slide here just gives you some idea of the diversity of Ontario's agriculture. This is primary agriculture, this slide. One item that I'd like you to take away from that slide is that just about 50% of our total agricultural receipts come from the livestock and poultry sector. Another important issue is that the livestock and poultry sector, although it is spread across the province, is particularly concentrated, as is much of our agriculture, in the southern part of the province, and particularly in the southwestern part, where much of the population is as well. So some of the issues we face in terms of issues management and emergency management are not the same as they would face in, say, western Canada, where the population is a lot more sparse in the major agricultural production areas.

We have had experience in dealing with incidents and emergencies that had agri-food impacts in the past. Probably the most important two, and the ones that there

was the most activity around, are the first two there: the 1989 Hagersville tire fire—a lot of concerns about contamination of the agricultural production area around that—and then of course the large ice storm in eastern Ontario and western Quebec back in 1998, and a significant effort there. But there have been a number of other issues, including the SARS issue. We were, I suppose, somewhat on alert because of the potential animal reservoir issues relating to SARS. It had concerns both in the agriculture sector as well as in the greater human health sector.

I've just identified two recent out-of-province emergencies relating to, in this case, animal or livestock disease. Just to let you know, in the case of both of those we were in the early stages of emergency response. One doesn't really know how widespread they are when they're first reported. I suppose our major activities relating particularly to the BSE finding in Alberta relate to recovery, of the four areas of emergency management.

I think it's also fair to say that there have been several significant incidents where we have to learn lessons from incidents beyond our borders, and you can see a list of them there. The list could be longer than that. I guess the key issue here is that there were significant economic impacts in all of those areas and considerable human health impacts, particularly in the BSE incident in Great Britain, and then it spread throughout Europe. Also, although they were incidents beyond our borders, they certainly have heightened public concerns in Ontario relating to agricultural emergencies, and particularly livestock and poultry diseases.

What are the types of agri-food emergencies we have seen or could see? Here is a list on this slide: certainly natural emergencies—ice storms and floods—and we had two examples of that; I suppose what we could call man-made, or accidents—nuclear or chemical issues; foreign animal disease outbreaks is obviously a fairly large one. The type of activity that would be involved here and which organizations would be engaged probably depend on whether this is a disease that's specific to livestock or poultry or whether in fact it's what we call a zoonosis, a disease that potentially can be spread to humans and has human health impacts. Certainly BSE, or mad cow disease, and avian influenza are two examples of that. In the case of foreign animal disease outbreaks, once again there's an immediate national impact, and basically a federal lead in those issues, with provincial support, would be our role.

The comments on foreign animal disease also relate to plant diseases and pest infestations. There could be issues around food contamination, whether that's microbiological or chemical. Once again, I think that because of the concentration of the food processing industry—we don't have as many small plants; they tend to be larger mega-plants now—the potential impact of an issue is considerably greater. In the case of food contamination and food recalls, seldom does this get to a full emergency response, but there is significant mitigation recall activity taking place all the time.

Other issues include environmental impacts—potentially pesticide or manure spills—and I guess added to our list in recent years are the concerns that some of these issues on this slide also could be caused deliberately, so potential bioterrorism or other terrorist-type activities.

If we look at risk—and we try to take a risk-based approach to our emergency management planning—it is generally defined as sort of the likelihood times the impact of the event, if it happened. I think we could probably say that in the case of a number of these issues, both are increasing. Particularly the impact I think is increasing; the likelihood perhaps not in all cases, but if we add the sort of deliberate activities to that, certainly we could see the likelihood also potentially increasing over the last few years. These emergencies could have an impact on human health, particularly if it's a zoonosis, on the economy, both provincially and nationally, and on our trade status worldwide, which is important to our agri-food economy, and also on animal welfare, and environmental damage.

We mentioned that the impact is increasing. I think there are a number of contributors to that: the heightened public concern or expectations relating to human health and safety, again brought to light by some of the incidents around the world, but certainly we feel there's a much greater concern relating to zoonotic diseases and food safety issues. Diseases with potential animal reservoirs, such as West Nile virus, have also raised public concern.

The international trade environment is, I think, much more sensitive in the past few years. Foreign animal diseases have had huge trade impacts, and we only need to look at the finding of a single BSE cow in Alberta as an example of that. In fact, these impacts aren't always related to the true human or animal health impact; they sometimes are much greater than that.

The cross-jurisdictional aspects—there are certainly significant cross-jurisdictional requirements with respect to preparedness response and recovery, and that is at the federal, provincial and municipal levels.

I think we also see, because of the increased impact, that industry expects to be involved, really at all stages: in the mitigation, the preparedness, the response—obviously they would need to be—and in the recovery phases, and I think it has expectations around potential compensation as it relates to recovery.

The bottom line here: What can we learn out of all of this? I think we see that although there have been incidents in the past, because of this increased impact, more of these incidents are becoming what we would classify as emergencies and I think requiring more attention.

In the case of ourselves, the Ministry of Agriculture and Food, a relatively small ministry, historically I guess we've been primarily involved with the mitigation stage of emergency management, to some extent on recovery, but primarily on trying to prevent the issues from ever happening. I think we are now challenged to move more to emphasis on the formal preparedness and response phases.

1020

I'd like to deal now with some of our activities as they relate to preparedness and response. This slide contains some of the activities that we are engaged in. We've been assigned through the Emergency Management Act a special responsibility area, that of agriculture and food emergencies. We have an all-hazards-based plan, the food and agricultural emergency response plan. We have a ministry emergency management coordinator, a ministry operations centre at our headquarters at One Stone Road in Guelph, a ministry action group response system and a situation response team that for many years now has been on a 24/7 basis.

We participate in emergency simulation exercises, not only those held centrally by EMO such as the annual nuclear exercises—and there is one, I think, this October; that will be another exercise—but also a number with industry within our own area, so a foot-and-mouth disease simulation back in 2000, a poultry disease simulation last year, and another large poultry disease, this time specifically on avian influenza, that's being planned for this November.

A lot of our activity in terms of preparedness relates to plans, so, as I mentioned, we have this all-hazards food and agricultural emergency response plan with preparation of a few annexes to that. We have a business continuity plan that is in the process of being further developed, a nuclear plan. We also have in draft stages a few other plans: an Ontario critical pest introduction plan; a joint Canada-Ontario foreign animal disease response plan, and that one is basically, any day now, I'd like to say, going to be signed by the three main signatories, including the provincial government in the form of ourselves and Dr Young, and the CFIA, the Canadian Food Inspection Agency. We also have a food-borne hazard and illness outbreak investigation memorandum of understanding at the draft stage with CFIA, the Ministry of Health and Long-Term Care, Health Canada and a number of other participating organizations.

Other activity relating to preparedness: We have a considerable amount of work taking place around geographic information system mapping, improving our capability in that area, originally using data that we obtained from the farm business registry process that we're responsible for, but also some data from other ministries, including the Ministry of Natural Resources. We're working fairly closely with the various commodity groups—Dairy Farmers of Ontario, Chicken Farmers of Ontario and so on—to attain better data. Certainly I think they have better data sets in terms of their producers: who they are, their size of operation, where they are and so on. We're attempting to create a general agri-food emergency management database to capture this information for potential use in emergency response. We also have, in terms of preparedness, laboratory services available through our lab in Guelph for emergency testing.

In terms of response, again I would just highlight that in some of these issues we have a lead role and in some

issues we have a support role, particularly as it relates to our role with the federal government and the Canadian Food Inspection Agency. We have a very close working relationship with the CFIA and with the agri-food industry. In terms of some specific types of emergencies, food contamination or food recalls, the CFIA is the lead authority. We work with them closely around that and in some cases would be identifying issues for them to look into. The Food Safety and Quality Act has the authority provisions to trace products, if we feel that's necessary, based upon the authority that already exists within the CFIA and also the Ministry of Health and Long-Term Care relating to food recalls. As I mentioned before, we have a draft multi-agency protocol developed with the CFIA, health and long-term care, environment, natural resources and, federally, Agriculture and Agri-food Canada and Health Canada.

In terms of foreign animal diseases, I've mentioned this I guess in a few previous slides, but this triggers an immediate national response if it's a reportable foreign animal disease identified by federal legislation. CFIA is the lead authority on the response to these diseases and, once again, as I said earlier, the response varies depending on the status of this, whether it's a zoonosis or a disease that's specific to livestock or poultry. It may involve participants at many different levels—municipally, provincially and federally and various ministries—particularly if it had human health impacts. If in fact a foreign animal disease is located, then there's a very high likelihood that the borders would be closed to trade, as you saw in the BSE situation.

In terms of industry coordination, we also work very closely with industry to develop emergency plans. The industry is very much involved in all of our simulation exercises, and certainly we need to continue to carry out that coordination with respect to a number of issues: biosecurity, disposal, movement control and communications.

In the last two slides I'd just like to focus on what we see as some of the challenges as we move forward with our planning and preparation. I don't think I can identify for you today that any additional authority is required in all of these. I think we're still working on that with a number of different organizations, and I don't think it would be our intention to suggest that more authority is needed if the authority already exists within other federal or provincial legislation and agencies. But as we prepare our plans, certainly there are some issues that we've identified that we're continuing to work on.

I'd like to focus on the livestock health issues, but a number of these issues we're identifying here could also relate to plant health or natural and other emergencies, but we'll just focus on some of the key livestock health issues.

The first one is the cross-jurisdictional coordination for foreign animal diseases with CFIA relating to the national Health of Animals Act. Once again, if this foreign animal disease were a zoonosis, it would be much broader, with many more agencies and organizations

involved. There are diseases that are classified as reportable or foreign animal diseases, but there are also some diseases of significant economic impact, particularly regional economic impact, that are not reportable and that the federal government does not have mandatory authority relating to. So I think an issue for us is authority relating to some of those non-federally reportable diseases. An example of such a disease would be bovine virus diarrhea, which affects dairy and beef operations. We have had outbreaks of that in the past and need to move quickly to bring them under control if we're to stop significant economic impact.

Another issue that I just identify is the early warning protocols and controls and, I suppose, authority. In a number of these incidents we would like to be able to move quickly, take decisive action quickly so they don't become full-blown emergencies. The authority for various agencies to do that, I think, is something that is being examined.

A number of issues relating to restriction of animal movement: We don't currently have authority to do this animal movement; perhaps zoning the province into different zones to try and keep a disease outbreak isolated to a particular area. Potentially, one might also consider the authority to close off our provincial borders if there were a disease identified in Quebec or Manitoba that we wanted to try and avoid getting into Ontario.

Compensation is an issue and a particularly important issue if we're going to have adequate response and reporting relating to animal diseases, and compensation as it relates potentially to those non-federally reportable diseases in particular, because there is a federal process and plan that the CFIA administers relating to their reportable diseases.

1030

Emergency humane slaughter could be an issue, the authority and compensation aspects of that; particularly disposal of animals or animal products in emergency situations. Certainly there are established protocols for normal times, but there could be issues relating to emergency situations.

Another issue is access to information in an emergency. Both our own Freedom of Information and Protection of Privacy Act as well as the federal PIPEDA restrict use of information based on the reason for collecting the information and an expectation of confidentiality, but in the case of emergency, some of this information—for example, laboratory results—may be needed to help react quickly to potential emergencies.

I'd identify two other issues. I mentioned that we have some laboratory capacity, but whether that capacity would be adequate would depend on the size of the emergency. Certainly in a number of cases, it probably wouldn't be adequate.

Disease surveillance: Currently, we operate a primarily passive system based upon samples submitted, but we can see, as concern rises, that this needs to become more active.

The final point I'd make is that on all of these challenges there are issues around coordination, authority and, although I know it's not this committee's responsibility, issues around resources for those potentially new responsibilities.

Those are my comments, Mr Chair. I hope I haven't gone too long. I probably have, but I'll turn it back to you.

The Acting Chair: Thank you very much. We have about five minutes per caucus. We'll start with the government side.

Mr John Wilkinson (Perth-Middlesex): Thank you, Don. Specifically, I'm going to talk about the simulations. I know of one that's been going on with pork, where the poultry industry and pork have gone together. I know, as the member for Perth-Middlesex, some of the things we've learned in the poultry industry are very important to my constituents.

I was at the Ontario Pork Industry Council. They had a presentation and they talked about the last simulation—there's another one coming up—and just specifically about where we have some trouble with jurisdiction and about being able to jump on these things early enough. I've been reading about the response in British Columbia to avian influenza, that if the government people there had a chance to do it over, they would have jumped on that situation a lot quicker.

It goes back to the situation I see coming out of the last simulation, and perhaps this one that we're having this fall. One of the specific suggestions I was made aware of as a member was the idea that we don't have a chief veterinarian in Ontario, someone with the authority to come in and say, "No, no, I'm the chief." We have our chief medical officer of health. Everybody knows that if push came to shove, it would be Dr Basrur, and she would deal with it. She'd be at the top of the list. But we don't have that for foreign animal disease. So we get into this whole thing of, is it the CFIA, is it the federal people or is it us? I was wondering if you might comment about whether or not we might be able to break that log-jam by having somebody who's clearly identified as the person when there's a foreign animal disease that's been identified and we need to get restriction on movement. We need to be able to come in there and contain this just as quickly as possible. I would be interested in your comments.

Mr Taylor: In fact, we do have a provincial veterinarian that is named. I think, to your question, though, it's the authority of that provincial veterinarian to take action, and certainly they're not comparable authorities to what Dr Basrur would have as chief medical officer of health.

A number of these issues that I had identified in terms of challenges are also issues that the industry has identified. I know the poultry industry has taken a real lead here and worked with a number of the other organizations, Ontario Pork included. I think it is becoming their position that we need to look at the potential for stronger authority. They've identified the need for an

animal health act specifically to provide a provincial veterinarian or chief veterinary officer with considerably more authority to take action. I think your identification of early action—early action is what's required here if you're going to avoid the significant impacts.

This is the type of thing we are looking closely at. We are working with Dr Basrur and the Ministry of Health, as well as with Dr Young and other ministries and with the federal government. Again, I think our concern is we don't want to have significant unnecessary overlap of authority, but at the same time we take seriously the concerns of the industry. They've become much more concerned recently as a result of some of these other activities that we identified.

Ms Laurel C. Broten (Etobicoke-Lakeshore): One of the things that we heard yesterday and even before that is that the province can only do as good a job as the information they receive from the front lines, whether we're talking about EMS services or otherwise. I'm wondering if you can help the committee identify whether or not your ministry is able to receive the information you need to be able to undertake emergency management in the agri-food area and, secondly, whether or not as a provincial ministry you have the tools necessary to be able to do the job you need to do. I suspect that over the last number of years, if you look at the emergencies we've had, there has been some debriefing after those emergencies. Have we examined how we could have done better, and is there information you can share with us as we look at legislation that's not been looked at for many years and try to figure out the tools we need in this province to do a better job dealing with emergencies?

Mr Taylor: In terms of receiving the information early, as I mentioned, I think we have a pretty strong working relationship with the industry, with both the production sector and the processing tech sector, and those really are the front lines of the industry, as well as our field staff presence and our working relationship with health units, the federal government and so on. So I think we have access to early information, but as I've identified here, there are some issues with how that information could be used, how it could be shared and what we could do with it that certainly will take some more work. I don't know if I have a short answer to your question other than to say I think there are issues that we're identifying here that need to be further examined and a determination made whether more authority is required to take action on them.

Ms Broten: We can sit back—and there's always a desire to have more authority, more information. The challenge we face is balancing authority against people's privacy, as you've indicated yourself. Is there a specific example of a circumstance in this province where agri-food was not able to do their job because they didn't have access to information?

Mr Taylor: I don't think we could identify any specifically at this time. As it relates to foreign animal diseases, we've been fairly fortunate in the province not to

have had some of the situations that have occurred in other provinces and other countries. Certainly we can identify potential situations around, let's say, disease outbreaks, particularly non-reportable disease outbreaks, where currently there are significant questions around whether we could share the information we receive through our provincial lab; if we were to get back a positive for a particular disease, let's say, whether we could share that information with the federal authorities that we needed to share it with in order to put the plans in place. I don't have any specific examples from the past but certainly as we look forward and look at potential situations, I think there are issues, yes.

The other comment that Maurice just reminded me of is that the information set is not complete yet. I mentioned that we're working with producer organizations and industry organizations to try and get a more complete data set, but not all of those producer organizations have complete data sets themselves, so that's another issue as it relates to developing that GIS information base.

1040

Mr David Zimmer (Willowdale): Two questions: It seems to me that this whole issue revolves around two points; that is, how quickly you can identify a crisis situation, a situation that needs intervention, and, once having identified it, how quickly you can marshal the tools or resources that you need to deal with the crisis. So on those two issues of how quickly you can identify it and how quickly you can marshal your resources—and that's everything from labs to staff, all of those things—what do you say the three biggest challenges are, in order of priority, in those two things: identifying and marshalling the resources? The three biggest challenges, the nuts-and-bolts challenges.

Mr Taylor: In terms of identification, I think it would be the ability to share the information. I think we do have a reasonably good system of early identification, but sharing the information in order to start that response is an issue.

I don't know if I could identify two additional ones with respect to the response. I think we have identified a number here, depending on what the situation is: if it's a livestock disease, whether it's reportable or not; the authority to potentially restrict movement and try to isolate that, because that certainly is an important issue that we would need to move on quickly. And then I guess I would probably also identify—since the co-operation of private sector industry would be based upon their assurance that there would be some compensation there for them if they proactively work on this, I think that's also an important issue. But there are a number of others, depending on the particular situation.

Once again, I think we've been focusing a lot on livestock diseases. There are other emergencies here as well.

Mr Zimmer: My second and last question is, in terms of identifying, which is the first step to these things, it seems to me that the whole issue of compliance by your

stakeholders or the producers and so on is a big issue; that is, the self-reporting. There's an inherent conflict of interest whether to identify a problem that you're having if you're a meat producer. What challenges do you face in encouraging or getting full compliance from those folks on whom you essentially rely to identify a problem?

Mr Taylor: Perhaps I alluded to that in my earlier answer. I think they need the confidence that, by being proactive and identifying something, they're not going to be sacrificed for the benefit of the greater industry. Certainly I think our producer group in Ontario is very proactive in that we've seen significant proactivity in the poultry and other industries lately. But the issue of BSE in Alberta certainly raises questions with a lot of producers. If one found a case of suspected BSE—we see the impacts that the one has had—what's your best decision? We know theoretically what their best decision is, but there are a lot of questions among all producers based upon the length of time that the borders remain closed.

Mr Tim Hudak (Erie-Lincoln): Thank you, gentlemen, for the presentation. I apologize if I missed this, but I wanted to make sure I understood it fully. With BSE in Alberta or avian influenza in British Columbia, did either of those provinces trigger their emergency measures legislation in dealing with those crises?

Dr Maurice Bitran: Yes, they did. The case in British Columbia, though, was that the provincial emergency resources were triggered not at the beginning of the incident, and I think one of the lessons learned was that early intervention by the provincial emergency organization in bringing all those resources to bear in dealing with an emergency is something that is desirable. That's very much the approach that we're taking in Ontario, and that's why we have those working relationships with emergency management.

Mr Taylor: I should just mention that together with the industry and CFIA we are working on a lessons-learned-from-BC session, which is going to be held at the end of August, where a number of the key authorities from BC will be coming to Ontario to present information to the poultry industry and the other livestock industries to help them with their planning.

Mr Hudak: Does the British Columbia legislation have any advantages that helped them to deal with the avian influenza which we may want to bring in to the legislation of the province of Ontario, or if they had done it even earlier, to deal with it more directly or promptly?

Dr Bitran: I don't have details on the legislation. I would say, though, that if you compare the response in British Columbia with the response we had in Niagara-on-the-Lake recently, if you set legislation aside, I think what happened on the ground was a much quicker and more proactive action in Ontario. Luckily it wasn't avian influenza, but if it had been, we would have been on it much faster than was the case in British Columbia.

Mr Hudak: The point I'm getting at is that Dr Young made a very powerful presentation yesterday about the need for additional measures in Ontario's Emergency

Measures Act to try to update it, and some advice was to look at what other jurisdictions have done. Some of the things are powerful tools that wouldn't be taken lightly but may be important in particular situations, like the power to evacuate, to regulate and prohibit travel, mandatory recruitment, fixing prices and that sort of thing. From the agriculture and food point of view, and given what has happened in Canada, unfortunately, in the last couple of years, do you see a need for some of these powers in the Emergency Measures Act?

Mr Taylor: Yes. I'd comment on each of them specifically, but certainly there is the need to ensure that the authority is there and that we know how and when it would be used. In the case of British Columbia, we're looking forward to learning more about what they feel they did right and what they did wrong. Certainly it's our understanding that they did in fact have a plan in place and they did have some significant authority, but perhaps they didn't activate it as quickly as they should have. So there's the authority and the plan and there's also the implementation—how quickly one implements it—that's extremely important.

Mr Hudak: The timing on that is a bit unfortunate for this committee. Maybe through the clerk I could formally request that if there is information which comes—the end of August, I think, was your date—

Mr Taylor: August 31.

Mr Hudak: —that this committee could consider, it would probably be useful for all of us to gather that information.

I appreciate your general support for Dr Young's position in terms of additional powers. Are there any specifics, though, that you can think of from an agriculture and food point of view where particular powers could come in handy in addressing these issues?

Mr Taylor: As I mentioned, I think we've identified some specific ones here. In fact, there are a number of the issues that the industry has identified: restriction of animal movement, potential zoning, emergency humane slaughter, looking at disposal options and so on. I think there are a number that we could identify, but I do want to say that some of the work on specifically what's required is really just taking place—again, looking at some of the lessons from other jurisdictions. So we haven't got this to the stage yet where it's a completed policy. Certainly we have identified a number of potential areas where much more work has to be done, and that's what we're in the process of doing.

Mr Hudak: To be clear, those things that you mentioned, like emergency slaughter, restriction of animal movement and such, don't currently exist in statute under the ministry or any other ministry?

Mr Taylor: No, not with this ministry, and depending on the disease, perhaps not with others as well.

The Acting Chair: I just have a couple of questions. First of all, for the clarification of the committee and the public watching, could you explain zoonotic diseases?

Mr Taylor: I'm not a veterinarian or a doctor, but zoonotic disease generally is a disease of animals that

also has the potential to infect humans and have human health impacts. There are a number of diseases that livestock could get which have no human health danger and which are strictly an animal health danger, but there are some diseases that could have human health implications.

1050

The Acting Chair: So the reference to the cats in China catching that disease and it being transferred to humans was probably an example of that?

Mr Taylor: Yes, as would certain strains of avian influenza, as we saw early this year in Asia.

The Acting Chair: The next question I have is, can the Ministry of Agriculture or the Ontario government restrict animal movement from one province to another? In other words, if there are animals—livestock or something—in Quebec that might pose a hazard to livestock in Ontario, can we as a provincial government restrict the cross-border movement interprovincially?

Mr Taylor: No, we couldn't.

The Acting Chair: What would we have to do?

Mr Taylor: I think that would require working with the national authorities to try to develop a plan around zoning and putting the restrictions in place that would be necessary to make that work.

The Acting Chair: Do you think it would be a good idea for a provincial government to have those powers—as you call it, zoning—to restrict the interprovincial movement of animals?

Mr Taylor: It could be important that the authority be there. Whether it's something that the provincial government needs to have or whether it's something that could be done in conjunction with the federal authorities, I think it would certainly be important. Again, that depends on what the emergency is and what the disease is. So zoning is much more important and restriction of animal movement is much more important in highly contagious diseases than it is in some other diseases such as BSE.

The Acting Chair: So you're saying that right now that's being worked on, that kind of protocol?

Mr Taylor: Certainly that's part of what we're examining as we move forward on developing our plans.

The Acting Chair: The last question I have, Mr Taylor, is in terms of the reference Mr Wilkinson mentioned about the need for a provincial veterinarian with some teeth. Right now we have a provincial veterinarian. Who is that provincial veterinarian?

Mr Taylor: Dr David Alves.

The Acting Chair: Would you think it would be advisable for this committee to look at the potential of enhancing the powers of Dr David Alves? Should we perhaps begin a scrutiny of that, just to see if it potentially might be of value to have more powers or certainly the ability to direct certain activities within the animal community?

Mr Taylor: What we've identified here is—

The Acting Chair: I'm not asking whether you're in favour of giving more powers or not, but whether we should perhaps look at that area.

Mr Taylor: Certainly it's something that needs to be looked at. Whether that's the appropriate vehicle or not—but that certainly is one way of putting those powers into place.

The other comment I would make is that part of the recommendations of the recent Haines report relating to meat safety also talks about a similar issue. So it's certainly being looked at now and is something that the committee may want to consider, yes.

The Acting Chair: That's very helpful. In fact, I'm just wondering whether we should request that some member of the committee—or we could do it informally rather than asking the researchers—on meat safety either meet with the committee or make a presentation. That might be helpful because I think it deals with some of these areas and it's right up to date. It might be interesting. Justice Haines might not be available but certainly one of his researchers might be made available to the committee. I think it might be of value to us.

Ms Broten: I just have one additional question that follows up on the report from Justice Haines. Did any of the 113 recommendations made by Justice Haines touch on aspects that would be helpful in terms of emergency preparedness? It sort of goes to your active versus passive disease surveillance. In some ways what Justice Haines was critical of was the fact that perhaps even in the field we weren't as active as we should be getting out there, examining, having folks on the front lines. I'm wondering whether that is an additional hurdle that is faced in this whole area of emergency management and that there's simply not the capacity on the front lines to do sufficient active surveillance.

Mr Taylor: To your question, there were a number of recommendations Justice Haines made that would relate to emergency management as well. He talked about capacity for things like biosecurity traceability, registration of producers. He referred to the disposal of dead animals and animal products and materials. He referred to the need to have a foreign animal disease plan signed between the province and the federal government. So there are a number of recommendations made in the context of meat safety that are also applicable to looking at emergency management, yes.

The Acting Chair: If I could just clarify that, if we could ask Justice Haines to make himself or his designate available to the committee, I think that would be helpful for our information on meat safety. I think it would be transferred right across—

Interjection.

The Acting Chair: No, as an individual presentation, I think it might be helpful.

Thank you very much to both of you for the excellent presentation—very helpful.

MINISTRY OF THE ENVIRONMENT

The Acting Chair: The next presentation is the Ministry of the Environment: Gary Zikovitz, the emergency management coordinator; and Michael Williams, assistant deputy minister, operations division, Ministry of the Environment. You have about a half-hour. If you'd like to leave some time at the end for questions, we'd appreciate it. Could you identify yourself for Hansard?

Mr Michael Williams: Thank you very much, Mr Chair. My name is Michael Williams and I'm the assistant deputy minister of the Ministry of the Environment's operations division. Gary Zikovitz, who's our emergency management coordinator, has passed out overheads. We prepared them for you and the members of your committee, sir. It may spark an opportunity to twig questions for later. I'm mindful of your time. I think we can get through this probably in about 15 minutes and then we'll have some time for questions.

The Acting Chair: That's great.

Mr Williams: Basically what we'd like to do this morning is to tell you how the Ministry of the Environment discharges its mandate with respect to spills and emergency preparedness around spills. We're going to give you a little bit of a discussion around the legislation that we currently have in Ontario relating to our responsibilities for spills.

We'd all like there not to be spills. In this province we get reported anywhere between 3,000 and 4,000 spills on an annual basis, and they vary in significance and severity. We do have provisions, though, to ensure that dischargers of those spills are accountable for them. There are many roles and shared responsibilities across different levels of government and agencies. We have roles, for example, of the local municipality and the local authorities, we have provincial government roles and we have roles with the federal government. Specifically to the Ministry of the Environment, we have an order in council that assigns responsibilities for us to deal with emergencies that are relative to spills that adversely impact the natural environment.

The spills legislation we have in Ontario has been around for a little while and we've had a fair amount of experience with it since 1985. It's basically what's known as part X of the Environmental Protection Act. There are several key provisions to that legislation that I think are important for us to be cognizant of.

1100

First of all, what constitutes a spill? That is defined in legislation. Also defined is the requirement or the duty, as it's known, to report if a spill situation should occur in the province, as well as the duty to restore and clean up the adverse effects that may occur as a result of that. In the legislation are specific provisions dealing with rights of compensation. There is also some provision in the legislation for the varied roles and responsibilities, but particularly some empowering authorities for municipalities in terms of their response. The Minister of the Environment has some very clear powers and authorities

to issue what are known as directions and orders. I'm going to go through them more specifically for the committee in a moment.

In terms of what constitutes a spill, basically one can think of it as being a discharge occurring to the natural environment where something escapes or is discharged out of an approved containment facility. It's really as simple as that. A spill would also occur where there is a discharge that is abnormal in either the quality or the quantity of the material. If you flip over, we've included some photographs in your slide deck to show you the wide range of spills we have.

On slide 7, for example, a spill to air is shown. Some members of the committee may be familiar with the Plastimet fire in Hamilton many years ago. That's an aerial view of that one.

As we go over to slide 8, most people think of spills as basically to water, or to air if they see smoke, but there are also spills to land. It can be things such as this, where there's a truck or vehicular accident and maybe there are diesel fuel tanks leaking on to the ground. That's a spill to land.

The last slide shows a cleanup in progress with respect to a spill to water.

I want to turn now to some of the specific provisions that exist in the legislation. The first one we want to talk about is the duty to report. This is under section 92 of the legislation. Basically, it says that the person who has control of the pollutant or the person who causes or spills or permits things to happen is accountable and has a legal obligation to forthwith report to the ministry if the spill as it occurs causes or is likely to cause an adverse impact to the natural environment. So there's a very clear, strong onus on the reporting of spills to the ministry. The ministry's ability to receive these reports is through our Spills Action Centre. We have a 1-800 number in place.

There is also a requirement in legislation that the spill be reported to the area municipality or the local municipality, so that they're aware of what's going on. In some situations the owner isn't the person who is involved in the spill or who causes it or vice-versa. So there is an onus on the owner and the person having control to also report the spill.

It's not enough simply to deal with reporting, though; there are duties and responsibilities for cleanup and restoration. They accrue both to the owner of the pollutant and to the person who has control. They have to clean up and restore what has harmed the environment as a result of their actions.

On the matter of compensation—that's on slide 13—persons are entitled to compensation for losses or damages that are sustained as a direct result of being impacted by the spill, and they're eligible for their costs and expenses not just from the owner but from the person who actually has control. So there are compensation provisions in the legislation.

On the next slide I want to deal briefly with the municipal response provision, because municipalities are empowered to respond to spills in their area of juris-

diction and they have the legal ability to do so. They have things like right of entry on to property. They have a provision in the legislation that protects them; they have an immunity provision, so that they can go in and take action but cannot be prosecuted for those actions.

There is also an onus or a requirement on the municipalities to co-operate with others. Many times when we see significant spills, we will find the municipality organizing the local response to that. Our ministry will be called in to assist and will be part of the team, and there may be other provincial agencies or authorities, as well as the federal government. Of course the municipality also has the right to request compensation for the costs of their actions in managing and controlling the spill—and, if involved, in the cleanup of it—from the owner or the person who is in control of the spill.

I'd like to turn for a moment and direct your attention to the specific powers our minister has as Minister of the Environment. They are significant and have been exercised from time to time in dealing with spill events. Our minister, first of all, has powers known as minister's direction, in that she can direct specific actions to occur. She has an ability to direct her staff in MOE to undertake appropriate action. She also has an ability to direct individuals or companies who might function as agents of the ministry; for example, to bring in pollution control equipment or cleanup equipment. She can issue that direction.

In the case of responding to spills, if there's a responsible party who we can identify but they may be bankrupt or may be in default, perhaps we can't identify them immediately and they're not known, or perhaps they find themselves in a situation where they need to request our assistance because of the magnitude of the issue before them, the minister also has the power to direct response in those areas.

On the next page, there's another portion of the minister's powers that we'd like to make you aware of, and that is the minister's order provisions. This gives the minister the ability to issue an order to those who have a responsibility in the situation. The minister could issue an order to owners of affected properties. The minister could issue an order to municipalities, if it was deemed appropriate to do so, other public authorities who might be involved in this or any person who may be either affected or has an ability to assist in the spill. These are very broad powers. They are sweeping powers, and they are exercised judiciously as need be, depending on the severity and magnitude of the event before the ministry.

On slide 17, I'll take a moment to talk a little bit about the Spills Action Centre—that's the reference to that 1-800 number you saw earlier. We operate 24/7 in the province. We have a provincial service at the action centre that allows us to take all the information we're getting and coordinate responses to various events. Basically, we deal with spills, but we also deal with some other environmental matters. We have been involved in events such as what occurred last year with the power

outage. Our Spills Action Centre is fully operational around the clock.

We also have a number of responsibilities, by agreement, for other agencies or authorities that don't necessarily have our capability of a 24/7 presence. As you can see on the slide, we do it for an agency—the Technical Standards and Safety Authority has an agreement with us. We have an agreement with the Ministries of Labour and Health provincially, and the federal government—Environment Canada—enlists our services. These are principally for after hours, when access to their offices is closed down.

On slide 18, one of the unique attributes of the Spills Action Centre is not just in receiving reports, but the staff there are trained for action. There are protocols in place at our facility that clearly give staff an ability to evaluate the incident. This is very important up front in the first few minutes or hours of responding to a spill. You have to know exactly what you're dealing with and be prepared to act appropriately. Our staff are trained to both initiate and coordinate responses, as required, to get action happening out there.

They play a very strong liaison role with other agencies. Frequently, if you were to see them in action, they have a call-down list of whom they go to first, second, third or fourth as they go through to make sure the appropriate authorities are informed of and aware of the event that's happening and have the correct action underway.

They play a role of providing information to key parties with respect to the event and, in some cases, they can do an early alert system. We can actually provide some warnings, as we did in the power outage. When we got into failed power situations, we were actually having some discussions with facilities such as water treatment plants around the province that were experiencing problems. So that's the role and responsibility of the staff there.

1110

Your next slide, slide 19, is simply a photo that shows you this is geared very much as a response centre. It kind of fits the mental image that most people have of staff, with all of the access there, the computer panels. We do have emergency power in the building, and it was fully operational, as I said, last August.

In terms of the field response—and I use the word "field" in relation to our ministry; I think perhaps some members of the committee are aware that we have regional and district offices, like many field ministries—our first response is what's known as a level 1 response. This is where the district is able to handle the thing. A typical example would be a truck that spills diesel fuel. We can get somebody out there quite quickly locally. They can manage it during business hours. But I also want to assure the committee that our field staff are set up on schedules so that we can respond 24/7. So if it's an after-hours spill, at the district level we have what we call an environmental response person, and it's part of our

environmental response program that's run after hours and on weekends.

A level 2 response would be a response that would be put into play if the spill was more significant. Perhaps a spill to water where there might be some impacts to downstream users would be an example of where we'd broaden the network on that spill. We have what's called a regional response then. In our regional offices we have scientific, professional and technical expertise. We can do things like air and water modelling; we can provide backup support; we can get involved in the taking of samples.

My purpose for showing the different levels to the committee is to demonstrate that as the significance of the spill or the event ratchets up, we have a defined process in place where we can ratchet up our resources accordingly.

The last level is a level 3. This would be a very significant event such as a fire, a large industrial fire, a large industrial spill. This is when we would bring in assistance from other branches in the division. We would also look across the ministry, and if necessary we would go wider. Typically, what the level 3 response involves is getting environmental monitoring and reporting, especially for air monitoring and reporting when there are a lot of concerns about a spill to air. We would bring in a unit that is called the trace atmospheric gas analyzer. If you flip the page, you can see sort of the bus. That's the unit. We have two of those units, which we deploy across the province, and they're state of the art. They can go in and they can monitor very quickly what is going on in the atmosphere around the particular incident.

You can see on slide 22 that a little bit more recent event, in 2000, was the Scarborough Hickson fire that occurred, and we sent the TAGA unit in there very quickly to monitor.

In conclusion—I'm mindful of the time and allowing some time for questions here—we would like to provide you with the knowledge and assurance that we have a wide range of responsibilities. Although we're quite focused on spills, and that's our purpose here, we do other things. We provided a lot of support during last summer's power outage. Principally, the things we were involved in were failing power at water treatment plants, loss of pressure. That becomes a concern for fire protection in the communities as well as the safety of drinking water. We were involved as sewage treatment plants also experienced loss of power and failed and had to discharge. Industries—large industrial facilities—can't simply turn a switch on and off, so there were some incidents at large industrial facilities where there were spills to air, such as flaring, and we were deeply involved in those. We also had staff at the provincial operations centre.

I guess I would say to you that we are very fortunate in having experience over a large number of years with what I would classify as environmental response, and in some cases I would go as far as to say environmental emergency response. We're very well equipped to do that. We do undertake debriefs, which we have done,

particularly after last summer's event, and we make continuous changes and improvements to make sure that the staff and resources are there to be able to deliver what we need to deliver, because as much as we'd like the number to be zero, it's not realistic that it will be zero. Accidents will happen out there, and we want to be prepared to effectively respond to them.

So I would say to the committee, we do have the processes in place. We have the legislative framework that is very helpful to us. We do have powers, right to the ministerial level, for dealing with these kinds of events, and we're prepared to discharge these duties as we have in the past.

The Acting Chair: Thank you for the presentation. It's time for questions.

Mr Hudak: Thank you, gentlemen, for the presentation. Just a quick question on the resource level, and congratulations on the great work you guys do at the spills centre: Are you satisfied currently with the level of resources that is dedicated to the spills centre, or are there areas for improvement?

Mr Williams: I think I would characterize that by saying that as a result of the events we had last summer and with our responsibilities under our order in council, as well as looking at the new responsibilities that have accrued to the ministry in the area of drinking water, my comment would be that we have an appropriate level of resources to be able to maintain our 24/7 response capability. The centre is well set up for that and we believe we're well enough staffed to be able to carry that on. I guess anybody at any point in time would want to say, "Sure, we could use one more of these or one more of those," but basically, given the duties we have to discharge—and we have a fair track record of doing that over the last little while; it's not something that's just come upon us very quickly—I would say we're in good shape, sir.

Mr Hudak: Good stuff. With respect to the minister's powers under sections 94 and 97 of the act—I think you said the act was 1985. The act has been around for some time without substantial change, right?

Mr Williams: Yes, it has.

Mr Hudak: You described them as rather robust powers. I know you can't give an exact number, but how frequently would the minister use her powers of direction? Is it a rare occurrence or is it relatively common?

Mr Williams: The short answer is, we have used it. It's relatively infrequent.

Let me give you an example without naming any names. We had a situation where someone who was renting a cottage on a lake had their oil tank filled up and sitting outside on some cement blocks—the kind of thing I think folks can picture as a cottage environment. The line or something broke and it was reported that we had an oil spill of home heating oil. This particular cottage was situated very close to a watercourse and the stuff was getting into the watercourse. It was winter; ice frozen etc. We show up, we try and deal with that situation and we find that the accommodation is owned by someone out of

province, in fact out of country, and there are folks who are renting this establishment who are very sorry for this but may not have the financial means to deal with it. Our principal motive in operating on that basis is, "Let's get a direction out here that stops this right now, that authorizes the staff to go in, and we can get it pumped and cleaned before it hits the lake."

It's that kind of situation. It's not often we go in where people knowingly shirk their duty or don't have the means and ability to be able to deal with it. That's the kind of direction power.

In terms of order powers, they are very infrequently used. I think there have been a couple of recent examples that come to mind: a train derailment a couple of years ago up near the Parry Sound area and, previous to that, a situation out in eastern Ontario, where it was a very significant, large accident incident. Sometimes they get exercised also if there's a view that perhaps people aren't moving as expeditiously as could be.

I would answer your question by saying the legislative authority is there and we have found it to be helpful when it has been used in the past, but it is not used on a large number of occasions.

Mr Hudak: Dr Young made a strong presentation yesterday recommending additional powers in the emergency measures legislation. Some of the powers he listed that other provinces have exist to an extent, I guess, in the EPA. Do you see a reason to strengthen those or to put them in the umbrella legislation? How satisfied are you that the legislative tools exist today to deal with environmental crises or, to Dr Young's point, do we need to strengthen them?

Mr Williams: I'm sorry, I can't speak to Dr Young's point. I'm aware of his presentation and what he was speaking about. Gary actually sits on the committee of ministry emergency response coordinators that Dr Young chairs. But I guess my response to that would be that we feel the powers we have at the present time are adequate. I suggest the reason for that is because of our track record and experience with spills. We've done some fine tuning of policy, of process, that sort of thing.

1120

I should also say what's not in here; we've been focusing on the minister's powers. There are powers of what are known as directors in the ministry and staff in the ministry. Our environmental officers can go out and issue orders; our directors can issue orders. We're a very strong regulatory ministry with respect to spills and we've had a lot of experience with them. It's not like we're jumping into an arena of some of the other things I heard mentioned by a previous speaker, the new stuff in terms of animal disease and that. Spills are something we have a lot of experience with.

To answer your question directly, the powers—they're powerful. We use them when we need them, and I'm not sure we would suggest to you that they need amending.

Mr Hudak: Just a last question on that. Have you faced any charter challenges or court restrictions of significance on the use of those powers? That was a very

general question, but what kind of limits currently exist on the minister's ability or the regional director's ability to use the powers under the EPA?

Mr Williams: I'm reflecting on that, and I have one of my colleagues from legal services in the front row to help me on that. I don't think there are specific situations that come to mind around dealing with this. Perhaps I'll defer to my colleague, if you wouldn't mind, to better help answer it. I don't have one that comes to mind in terms of a director being challenged.

The Acting Chair: OK, who will respond? Could you identify yourself for Hansard, please?

Mr Gary Zikovitz: My name is Gary Zikovitz. I am the Ministry of the Environment's emergency management coordinator. We have used minister's directions sparingly, perhaps once a year, since the legislation came into force, and we've only used a minister's order about twice. I don't recall any significant challenges when we've used them. Basically, we use the direction or order, and if the party that is directed or ordered fails to do what needs to be done, we do it and then we recover our costs later on. There is no appeal process from a minister's order.

The Acting Chair: Mr Zimmer?

Mr Zimmer: There are a lot of shared responsibilities. You've referred to that in your presentation. I guess they're shared responsibilities between the federal, provincial, municipal and even the private sector on who should do what and when, and particularly who should report what. Do you have many jurisdictional conflicts over who should report what and how timely and so on? If you do have those sorts of jurisdictional conflicts, who has the hammer to sort them out? Who has the final word in a situation between the city and the province or the private sector?

The Acting Chair: Mr Zimmer, could you please put the mike to your face? Thank you.

Mr Zikovitz: Let me just point out that right now the Spills Action Centre receives reports for both the provincial and federal governments. We take calls for Environment Canada on a 24-hour basis, so if there is a dual reporting requirement, one call to the Spills Action Centre suffices for both. We both get the information at the same time.

Historically, where we have some jurisdictional debates—for example, where there's a First Nation involved and there is some federal jurisdiction—we work together to resolve the issue. When there is a municipal government involved, we always allow the local authorities to do their thing and then help where needed.

Mr Zimmer: In a crisis situation, where something needs to be done right now and a jurisdictional dispute arises, how is that resolved on an immediate basis to stem the damage?

Mr Zikovitz: I don't recall any specific situation where we've had a crisis where there was debate over who should do what. I think we tend to work together. It's a fairly co-operative approach.

Mr Zimmer: What would you do if that jurisdictional conflict developed? How would that get sorted out?

Mr Zikovitz: We have a number of committees that our partners jointly sit on with us. We discuss these things. We have regional emergency teams that are set up across the province where we bring in—

Mr Zimmer: With respect, what I'm contemplating is a situation that develops at 2 o'clock this afternoon, it's reported, there's some sort of jurisdictional question of who's responsible but everybody knows that it's got to be fixed by 2:30. So you haven't got time to do the committee piece and so on. Who's got the hammer in a crisis where there's a jurisdictional issue?

Mr Williams: I won't get into specific details on this, but I will tell you how we acted in one of those situations. The Spills Action Centre is 24/7, but so is my phone number, and as assistant deputy minister of the division I am frequently called in the wee hours of the morning or on weekends where there are significant events happening and we might want a broader response or there are multiple agencies involved. There have been situations where there's been a question of who should be in there now and doing what.

The set-up that we have results in that decision coming before me, and what would happen is that, by 2:30 in the morning or whatever day that needs to happen, I or my delegate would be reached and I would be rendering a decision on behalf of our responsibilities for this.

In the case of a couple of examples that have happened, I have directed such things as, "I want individual X on the phone now," whether it's at the federal government level or the municipal level. Bear in mind that when we're into a crisis situation like this, there usually are pretty good communications and abilities. People get woken up and in there, so you have a chance, even if it's from my home, that I could reach someone at the federal government.

I guess what I'd say to you is there is an escalating protocol for decision-making authority and, while I can't exercise the powers and authorities of our minister that I've described, I can exercise directional power and authority that will decide how to respond by 2:30. That's what would happen. Then the other thing that would happen from that is that Monday morning there would be a conversation about what we do to make sure it doesn't happen again, if it does happen.

Mr Zimmer: So there is a stop-gap measure in a jurisdictional dispute to get some action, and then you'll do a "lessons learned."

Mr Williams: Absolutely. We would not stand by and see an environmental impact because we were trying to worry about who would do what, but we would follow up on that.

Mr Zimmer: One last question. On the reporting mechanism, so much depends on the timeliness of the information and the quality of the information. I'm thinking more in terms of those areas where there's a duty on the private sector to report, but also on the gov-

ernment sector. What sort of training initiatives or education programs do you have for the folks, especially out in the private sector, who have a reporting duty?

Mr Zikovitz: Both ourselves and Environment Canada do a number of what we call spill prevention workshops across the province each year. Just recently we were in Thunder Bay. Before that we were in Sarnia. We collectively go out there and remind the industries of what their responsibilities are, including their reporting requirements etc, cleanup responsibilities, and how to prevent spills.

Ms Broten: I have two questions. I want to ask some specifics about the sweeping powers and the powers that the minister has as to what exactly she can order. I'm just going to run through some of the ideas that Dr Young gave us. For example, can the minister order evacuation in a spill jurisdiction? Can she order people to allow MOE staff on to the property? Could she order that businesses be closed if they're in that jurisdiction that is contaminated, for example?

Mr Zikovitz: I'll take a shot at that answer. Basically, our minister can order cleanup and restoration. She cannot order evacuation. So our focus is on cleaning up and restoring the environment, and that's where her powers are.

Ms Broten: So, for example, to conduct a cleanup and restoration, if you needed to enter a private property and no one can consent to that entry, do you just enter the property?

Mr Zikovitz: Yes. If you're acting under a minister's direction or order, you do have access to private property.

1130

Ms Broten: OK. I want to touch on the Peterborough flood and the involvement of MOE in that incident. Certainly we've talked about spills, but it's my understanding that your group is called upon in other circumstances to be part of emergency management in the province. I'm wondering if you can just touch on that aspect, because we haven't really heard much about your other roles in terms of emergency management.

Mr Zikovitz: Yes, we do have other roles in emergency management. When the Peterborough flood occurred, we were asked to report to the provincial operations centre. In fact, I went down there. We were part of the provincial team that responded to that emergency. Obviously, our issues were drinking water and sewage treatment bypasses as well as some fuel oil spills when home heating fuel tanks tipped over and things like that. We're part of the overall provincial team. I'm sure Dr Young outlined the process for activating the provincial operations centre during emergencies so that all provincial parties come and work together.

Ms Broten: Certainly during that incident, we all listened to the news. There were issues with respect to sewage in the city of Peterborough. Was that something MOE was specifically involved with?

Mr Zikovitz: Absolutely. MOE was extensively involved with that.

Ms Broten: In that realm of your responsibilities, do you have the tools you need to do the job in emergency circumstances in the province?

Mr Zikovitz: Yes. We believe our tools for dealing with spill-related emergencies, and that's what those were, are appropriate.

The Acting Chair: I just have a question. If there is a suspected airborne spill happening in a plant, do ministry officials have authority to enter that plant without a warrant?

Mr Williams: Yes. An environmental officer of the Ministry of the Environment could enter a facility.

The Acting Chair: Is that based on the act of 1985 under a minister's directive? What is that based on? Where would he get that power?

Mr Williams: Our environmental officers have powers of inspection and abilities that are conferred under legislation such as the Environmental Protection Act. A part of the Environmental Protection Act speaks to the minister's power to direct or to order. There is other legislation, such as the Ontario Water Resources Act, the Environmental Protection Act and other provisions in there, that allows our field staff, who are known as environmental officers, to go on to properties in the discharge of their duties.

The Acting Chair: Could they enter a home without a warrant? This is what came up yesterday. Dr Young felt that they had no power to enter private property. They would be charged with trespassing. Yet the Ministry of the Environment has already solved the problem.

Mr Williams: I would undertake to get back to the committee on that. I don't wish to speculate. I think your earlier question relative to an industrial facility with a spill is quite clear, but I think a matter of a private residence is a whole different story. I'd be happy to get back to you.

The Acting Chair: The question I want clarified is that this is essentially private property, whether it be a plant, a place of business or a residence. I think this is very crucial for our committee, given Dr Young's presentation yesterday. He felt one of the encumbrances to dealing with an emergency was that they really had no power to trespass or to enter a person's home. Therefore the operations of the Ministry of the Environment in this area might give us a better idea of what sort of protocols are used there and let us see whether they can be transferable to other emergency measures providers.

Mr Williams: I'd be happy to undertake to report back to you. The residence is an issue that we clearly don't have, and the other powers of entry for an environmental officer are quite narrowly scoped in legislation. It is going into a facility or on to private property for a very specific discharge of duties and responsibilities relative to a spill. They couldn't exercise those powers for things that are not contemplated by the legislation. An environmental officer can't go in there to check something out that isn't clearly defined under the scope of the environmental legislation that he or she is authorized to discharge.

The Acting Chair: Anyway, if you can make that available to us in writing. The committee might wish to talk to legal counsel about it just to see what the parameters really are here and where they're applicable in other areas.

Ms Broten, a question?

Ms Broten: Yes, just to follow up on that: One of the examples Dr Young gave us yesterday was a request to enter private farmland, for example, to build a dike knowing that there had been a spill or a flood and that was a good place to stop the water or pollution from flowing. Is that something you are able to do under your current legislation?

Mr Williams: Yes, because that would be taking direct action to prevent further environmental impairment or to restore on the basis of that spill.

Mr Zimmer: Just quickly, you made it quite clear in your remarks that you felt you didn't need any increased powers. Are there any areas you feel you don't need increased powers but rather an increased or more focused clarity of your responsibility and authority? So not powers, but clarity of powers that you've already got.

Mr Williams: I would answer your question this way: I noted in the previous speaker's slide that one of the bullets was dealing with—I believe the wording he used was environmental restrictions and disposal of animal carcasses and things like that. I would inform the committee that we are having discussions with our Ministry of Agriculture and Food and we're working with Dr Young and his team on making sure we're well prepared should there be an incidence of things that we're not normally experienced at dealing with, such as avian flu or some kind of foreign animal disease type of thing. It may well be that at the end of those discussions between ministries we might need some minor regulatory amendments to deal with either the definition of agricultural waste, for example, or to confirm that there are powers and abilities that would withstand any potential challenge for directing where those materials might go at the end of the day. So, yes, I would see that we might have some changes there.

Mr Zimmer: Mr Chair, would it be appropriate to ask this witness to give us a list of those areas where he thinks there might need to be further clarity rather than further power?

The Acting Chair: I think that's a reasonable request. One final question: Mr Arthurs.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): Are there other environmental incidents that the ministry would have a lead role on in addition to spills that the minister, through an order or directive, would be able to act on? For example, a tornado presumably has natural consequences involved. Are there other functions the ministry has, in addition to spills, in which there would be those types of powers and authorities?

Mr Williams: I believe the short answer to your question is yes. It is a ministry responsibility. It is one of my colleagues on the senior management team who is known as the province's chief drinking water inspector.

There are powers and authorities—I'm sorry, I'm not totally familiar with the sections of the legislation—conferred upon the province's chief drinking water inspector and obligations on the minister for the provision of safe drinking water under recent legislation.

Mr Arthurs: At the very least, we may want to explore those parts of the environmental legislation in which the minister, through to that level, may have powers through orders or directives that may not be found in other pieces of legislation.

Mr Williams: If it would be helpful to the committee, when I respond on the other two action items, I'd be pleased to include a description of the powers and authorities for drinking water.

The Acting Chair: Yes, if you could file those three pieces of information with the clerk, that would be most appreciated.

Thank you very much. The committee stands recessed until 1 pm of the clock.

The committee recessed from 1140 to 1305.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

The Acting Chair: Ladies and gentlemen, we'll call the committee to order. The standing committee on justice policy will continue our review of emergency management statutes.

Our first deputant this afternoon is from the Ministry of Municipal Affairs, Diana Jardine, director of the municipal programs and education branch. If you could come forward.

Yes, Ms Broten?

Ms Broten: Before we start with our next deputant, I would like to make a motion for unanimous consent.

The Acting Chair: If I could suggest, it might be useful to have the rest of the committee here. I think they're going to be here momentarily.

Ms Broten: All right.

The Acting Chair: Ms Jardine, could you please begin. I'll just let you know that you have approximately a half-hour. If you'd like to leave some time for the committee to ask questions, I think that would be preferable.

Ms Diana Jardine: I'm happy to do that. I think my presentation will take about 10 minutes. Then I'm quite happy to answer whatever questions the committee has.

The Acting Chair: OK, thank you very much. You may begin. Just identify yourself for Hansard, please.

Ms Jardine: My name is Diana Jardine. I'm the director of the municipal programs and education branch in the Ministry of Municipal Affairs and Housing. I have with me Rebecca Luk, who is a senior policy adviser in our ministry as well.

I'm here to talk about municipal affairs' role in emergency management. Essentially, it's a role in disaster recovery, disaster relief. The order in council—I'm sure you're familiar now with the Emergency Management Act—assigns municipal affairs the responsibility to coordinate extraordinary costs related to emergencies.

These are municipal and provincial costs, individual and property damage costs, as well as emergency assistance costs. We have had a lot of experience in doing that over the last few years.

The purpose of the assistance is to speed up community recovery, to alleviate hardship on behalf of residents and to restore essential furnishings and property to pre-disaster condition. That's one of the keys in terms of our role. It's not to enhance what is in the community, but to bring people back to a basic level of support.

In order to determine the nature of assistance we provide, we've created four categories of disaster assistance that really permit us with flexibility to deal with natural and non-natural or technological or health-related disasters. The main vehicle we use in response to disasters for disaster relief is the Ontario disaster relief assistance program, commonly known as ODRAP, and then we create ad hoc programs depending on the need at hand.

If you look at the chart in the slide deck—it's called "Categories of Disaster Assistance" and it's in about five pages—we have the four categories of assistance. The first type is where it's a pretty localized situation, one municipality, a natural disaster. We use ODRAP, which is the program for natural disasters, responding to a natural disaster. In type 1, we usually forgive fundraising, which the program normally requires, because there is really little or no ability at the municipal level to generate funds from the community.

I can just elaborate a little on the northwest. It was unusual. It was a flood that covered an area approximately the size of France. It was a huge area, affecting a population of about 120,000 people, spread across northwestern Ontario. The damage was significant, but because they were rural-based, very small communities, there was very little they could do in the way of raising funds. So that was forgiven in their particular situation.

The other point I might add was that there was no ability up there to actually raise funds that normally you might be able to generate interest in provincially. You may not have heard of the northwest floods; very few people did at that time. Manitoba was flooding at the same time. It got the coverage in Toronto, not northwestern Ontario. That's definitely a factor in successful fundraising.

1310

The Acting Chair: Excuse me. What year was that?

Ms Jardine: That was in 2002.

Type 2 is one or more municipalities. Right at the moment, the Peterborough flood is a very good example. Again, it's a natural disaster. As I'm sure you've heard, floods are our most common disaster in Ontario at this point. With less than \$36 million damage, they use our ODRAP program and there is local fundraising. Peterborough's a very successful example of how they've been able to capitalize on a lot of press coverage about the situation to undertake province-wide fundraising and even national fundraising via the Red Cross.

Type 3 is related to something significantly larger, and that would be the ice storm in 1998. In this situation, it is also a natural disaster greater than \$36 million in damage. In this particular case, the province would go for federal assistance. That's the disaster financial assistance arrangements, and I'll explain that in a little bit more detail later. Usually there would be a national fundraising program that would go with this. That was certainly the case in the ice storm.

Type 4 is where it's an emergency but not a natural disaster. In this particular case, municipal affairs will design a custom-tailored program. We did in Walkerton. I'm referring to the emergency assistance program that we operated for a year in Walkerton until the official compensation program came into force.

Last year, we designed a program to support the SARS emergency. We have that flexibility, although we don't have a ready-made program. We do have to go to cabinet for approval in those cases.

The next page gives you a bit more of an outline in terms of ODRAP. Again, it's focused on property damage. We cover homeowners, small business, farmers and nonprofit organizations as well as municipalities which don't have insurance coverage. It doesn't provide full cost recovery, as I said. It helps eligible recipients restore their essential furnishings and property. The extra fridge and the billiard table in the basement are not eligible for assistance under the program.

The local community is required to undertake fundraising, and in the program the province outlines that it will respond and match that fundraising, if it's needed, up to \$2 for every dollar raised locally.

If municipalities have experienced extraordinary damage to public infrastructure, the province will also come in to cover the extraordinary costs. So beyond the normal costs of the municipality, it covers the costs of cleanup and repair of infrastructure to pre-disaster condition. In the last five years or so, that has usually been covered at 100%.

The next table gives you an idea of the range of disasters we've experienced over the last 35 years or so. There have been a total of 54 disasters where the province has been involved in providing disaster assistance. In the middle column, where it says "provincial private costs," we outline the assistance to private households and small business. In the next column, "provincial public costs," that would primarily be to municipalities to cover their costs. Then we outline the average cost per disaster. As you can see, the costs are rising. That's clearly the case.

Then what I pulled out to highlight for you at the bottom were the costs related to two disasters: the ice storm and SARS. The ice storm is relevant particularly because we were able to apply for disaster financial assistance arrangements under the federal program. You can see there how beneficial it can be to the province to actually obtain federal funding. The sliding scale formula, once you get up over \$64 million, provides that costs over \$64 million are matched 90 to 1 by the federal gov-

ernment, but costs have to get up pretty high before that will happen.

In the SARS case, you may be familiar with the provincial request last year for federal funding. The federal government refused to provide the province with funding under the disaster financial assistance arrangements. Although we did believe there was flexibility in that program to define SARS as a disaster eligible under that program, they chose to do a side arrangement, and obviously the funding was not quite as handsome, in terms of a formula for the provincial government. Nevertheless, substantial federal dollars were paid out.

I'd like to explain disaster financial assistance arrangements and how we approach them. Normally what happens is, a letter goes from the Minister of Municipal Affairs to, in this case, the federal Minister of Public Safety and Emergency Preparedness, Minister Anne McLellan, signalling that the province is going to be coming to the federal government for funding. We usually put an envelope amount on the table at that time. In the case of Peterborough, we have already signalled to the federal government that we will be coming to them with an amount of at least \$20 million.

In order to access disaster financial assistance arrangements, the province has to have experienced eligible damage at \$1 per capita. That means we have to have spent about \$12.2 million before we even qualify for the program. After that, the next \$24 million is shared 50-50, federal-province. That takes us up to about \$36 million. The next \$24 million is shared 75-25. After that, it's 90-10. It's a sliding-scale formula.

As a rule of thumb, the advice we've been providing is that you have to get around \$30 million to \$36 million before it's worthwhile provincially to go forward, because there are stipulations. The province has to spend the money. They are some differences in eligibility between our program and the federal program. Our spending is audited quite severely by the federal government before funds are released. Just to give you an example, we still have not finished the audit from the ice storm. We're still in the audit process. It has taken a very long time.

We have only accessed this program once before. The Peterborough flood is the second time. It looks like we've had signals that we may have some success with applying for federal assistance, but we don't have any formal response yet.

I thought I'd spend two pages on the Peterborough floods—the July 15 severe floods—because they're a very current example of disaster assistance programs we've put in place. Although the number is bounced around a lot, our best guess is that at least 2,000 households were impacted by the flooding, and a number of small business, somewhere around 100. It could be 70 to 120. Again, the number is still fluid. There was significant damage to municipal infrastructure, at least \$5 million that we have estimated to roads and culverts, in addition to other damage that's now being captured by the municipality.

1320

Our minister, in order to kick off the program, must receive a request from the municipality for the minister to declare the area a disaster area. In this case, the government moved very quickly. When Peterborough council, on the 21st, was passing its resolution to request, the Minister of Municipal Affairs, Minister Gerretsen, was there to say, "We've declared you a disaster area, and here's our initial advance of \$5 million for you."

The area itself is defined to include the three adjacent municipalities that were impacted by the flooding. To deal with private claims, the municipality then appoints a disaster relief committee. It's called the Peterborough flood relief committee. In this case, this committee represents all four municipalities: the city and the three townships. It has representation from all.

That committee is responsible for managing the claims and for fundraising. They have embarked, as I'm sure you're aware, on a very strenuous fundraising campaign. It looks like it's going to be extremely successful. They have also worked very closely with the city to use the initial advance of the province to pay out early claims of \$500 per household and \$2,500 for small business to help in the cleanup of properties. Claimants will be submitting more detailed claims once their insurance coverage is known. In some cases they won't have insurance, but where it is known, that will go in to the committee to be finally settled.

How the program works is that funds have to be raised. The committee has set a target of \$1.5 million and a deadline of the second week in September. All the claims have to be received, so that all the damages are known, and the claims deadline is August 31. Those two are then tallied, and the province would match the shortfall, in terms of eligible damages and fundraised dollars, at a rate of 2 to 1. That is the way the program works. Final claims will be paid out, in the case of Peterborough, toward the latter part of September.

The committee itself will bring on adjusters to go out and assess the damages. They are required to provide information on their claim form as to whether or not they have insurance and what their insurance has or has not covered, and this will be audited.

It's a fairly strenuous process. The disaster relief committee in this case, because we anticipate there will be on the order of 2,000 to 2,500 claims, will set up a small team of staff who will be focused solely on the claims management process. They usually are contract staff who are brought in; in some cases, former government staff, former municipal staff who have experience with this type of program. The municipally claimed damages will be settled by municipal affairs once the municipality submits their estimates and final costs. The final note: As I mentioned before, there has been a request to the federal government for assistance.

To sum up: In the future, there are obviously lots of improvements that can be made to programs. Every time we go through a disaster—each one is different and unique—we do a lessons-learned exercise and turn that

around to improve our response the next time. As a result of our experience in the ice storm, for example, we have instituted two processes. We have what we call the provincial disaster assessment team. It's a team led by our regional director at municipal affairs locally with the appropriate ministry colleagues—a fellow from our buildings branch who is either an engineer or an architect, again depending on the damage. They are out on the site of the disaster within 24 hours. So you've got your first responders out there, but on the disaster assistance side, we're out there as well trying to get a grip on the nature of the damage and the type of assistance that's needed.

We brought that in so we could turn around our assistance to the community much faster, and it certainly paid off in the case of Peterborough.

The second thing is that we have set up an inter-ministry committee called the disaster assistance review committee. The team in the field reports in to this inter-ministry committee, which then looks at the nature of the assistance that might be necessary in the community at hand: whether there is some form of economic recovery or tourism recovery, whether there are any special emergency social needs out there, whether that's something that can be supported locally—in the case of Peterborough, their social services department fulfilled that function very adequately—or whether we need to bring in a group of people to provide that kind of upfront assistance right away to people who are in need.

There are always improvements that can be made, and we do that. Certainly stronger links to other government programs is an area that, from a policy perspective, we are beginning to explore, and that is how to essentially double up our programs; for example, how to use and spread the word that it's appropriate to use emergency provisions under Ontario Works to support people in need in that two-week emergency period right after a flood; how to use tourism dollars, for example, in the case of Peterborough. We've done that. The Premier announced yesterday tourism recovery dollars to Peterborough. So that's a good example of how we can utilize existing programs for the communities in need. It may mean loosening up some of the criteria for the programs, for eligibility in an emergency situation. That is something we think would be very valuable.

The other area that's critical is the area of federal assistance for non-natural disasters. I think probably Dr Young yesterday talked about the avian flu work we had been doing. There is a provincial committee looking at how to respond if avian flu hit Ontario. It's quite clear that there is not a direct route for federal funding. If an emergency like that hit the province, we would have difficulty in knowing which agency we should be going to federally for assistance. Clearly there are some programs in agriculture, but there's nothing to assist the municipalities. They would be impacted by the kind of quarantine that would be put in place, perhaps supporting roadblocks, perhaps utilizing their facilities for various purposes. They would not be eligible for compensation

under the agricultural programs, so we need to work that out.

We can't be spinning our wheels as we did in SARS last year. That was a public health emergency and obviously the province was way up here in terms of costs. We needed to get assistance and we needed to know which minister we were talking to federally. There is a signal that the federal government is interested in talking about this, at the staff level at any rate.

Questions?

The Acting Chair: We have questions, and we'll start with Mr Hudak.

Mr Hudak: Thank you very much for the presentation. If I missed this at the beginning, I apologize. Is there funding set aside dedicated to the program on an annual basis, or do you go for a request to Management Board on a case-by-case basis?

Ms Jardine: We go to Management Board on a case-by-case basis.

Mr Hudak: It's not a line item that's in the budget every year?

Ms Jardine: We have a line but we don't have any money in it—well, \$1,000.

Mr Hudak: So a small disaster as can be treated for \$1,000.

Ms Jardine: Very small, yes.

Mr Hudak: Would people who have dealt with the program describe the disaster relief program as generous or not generous?

Ms Jardine: If you're talking about recipients, individuals, I don't think they would describe it as generous. I think it's a very cautious program. For example, in the adjusters' manual we use costs out of the Sears catalogue. So if you've spent \$1,200 on a fridge, you're not going to get \$1,200 for a fridge. I think it's a very judicious expenditure of public funds.

Mr Hudak: Do you usually have a public relations issue when this occurs, that it's lacking as opposed to being helpful?

Ms Jardine: There are always issues in terms of responding to disasters. There are always people who are quite satisfied and people who are not satisfied with what they're going to get. I can give you one example: insurance deductibles. We don't cover insurance deductibles, so there are people who are dissatisfied. But I can't say that we've ever had any major negative publicity. I think generally people accept the program as a reasonable government response.

1330

Mr Hudak: How do we compare with other provinces?

Ms Jardine: Virtually all the provinces have something similar. Ontario is the one place where it's delivered by a separate ministry. In the other provinces they are usually under emergency management. Virtually all the other provinces, with the exception of Quebec, also access disaster financial assistance arrangements on a regular basis. They are eligible for that assistance usually because of their much lower population.

I won't get the numbers right in terms of Manitoba, but I think the population is three million. Disaster damages have to hit \$3 million and, you can imagine, in a farm flooding situation that's going to be approached pretty readily. So they're eligible on a regular basis. The other provincial programs readily mirror federal requirements, whereas Ontario's are slightly different and slightly more generous than the federal program.

Mr Hudak: In terms of an operations point of view, does the program function relatively smoothly? Do you get any information you need in making your calculations, enabling the minister to declare the disaster area and set up the committee, or are there significant areas for improvement on the operations side?

Ms Jardine: We learn something new in every disaster, but I think we've got a pretty smooth-functioning team now. We're training our regional staff on a regular basis. We do some simulations, so people who are new in our regional offices are aware of the program and the process. I think it's pretty smooth. We could always use more resources, though.

Mr Hudak: Resources, for sure, but in terms of powers—a lot of the committee's time has been devoted to whether additional powers are necessary in any of these programs and the ministry responses.

Ms Jardine: Yes, that's right. Well, ours is a program, so we don't rest on legislation per se other than the OIC. From that perspective, I don't think there's anything in particular that municipal affairs would need in addition.

Mr Hudak: So things like information-gathering, making sure that you have accurate assessments of public or private damage, disbursement of funds, that all flows smoothly and you have enough information?

Ms Jardine: Yes. I would say in virtually all cases the municipalities are more than willing to provide us with estimates of their costs and then ultimately all their backed-up receipts and so on. We haven't had any problem at all in that area and I don't think there's anything further that we would need to support that role.

Mr Hudak: This is the last question. I'd ask for a general comment, if you could. I think we're all very frustrated, as you had indicated too, with respect to the federal reaction to Ontario's situation in the SARS crisis. Do you have any suggestions on how we could improve that? Was that a one-off circumstance that had more to do with politics than it did with a good relationship between the administrative side? What's your comment on improving that situation?

Ms Jardine: What we need, provincially, at the federal level is one window into the federal government. We need to know that the emergency management ministry—PSEP, Public Safety and Emergency Preparedness Canada, is the office that we deal with—and I think this would be the ideal, is in fact the one window and could pull together their colleagues in other ministries to determine what the appropriate programmatic response is in terms of a particular disaster. That hasn't happened. I think they have, since SARS, been working with their

colleagues to try to put something like that together. They've been dependent on Treasury Board to have the central clout to pull that together, but if we had that process ironed out, that would make life a lot simpler and would speed up decision-making. We need the federal government to acknowledge that they are prepared to respond in non-natural, technological health disasters.

Mr Hudak: Is it simply a program? Is it legislative?

Ms Jardine: It's a program.

Mr Hudak: I remember their interpretation of the program was very strict. You just made the point that we should look at broadening what qualifies for the federal program. So it is a program, but it would simply be the responsibility of the federal minister changing the definitions?

Ms Jardine: It's a program and I think the way they're looking at it now is that they would leave this program, which is disaster financial assistance arrangements, intact and they would create another umbrella, another set of arrangements that could be put in place for the non-natural emergencies or disasters. That's their preference, at any rate, making improvements or changes to the disaster financial assistance arrangements along the way to improve some of the workings of the program.

Mr Hudak: One last question with respect to the minister's ability to deal with extraordinary circumstances, like the remote north, First Nations, the unorganized areas: Is the minister's power sufficient under the current program to deal with solutions in those areas outside of municipal jurisdictions?

Ms Jardine: We haven't had a lot of time to look at that and perhaps we could come back to the committee. I wouldn't mind having a further look at that in discussion with our legal people. We could provide you with some advice on that later.

Mr Hudak: I think we'd appreciate that.

The Acting Chair: It's noted for the clerk.

Mr Hudak: Thank you.

Ms Broten: Thank you for your comments. One of the things that we've certainly been learning about over the last couple of days is that one of the difficulties we face as a province is dealing with ever-changing disasters and disasters that historically we haven't had to deal with, situations like the blackout, terrorism, whether bio-terrorism or otherwise. I'm wondering whether you can give us some comment from the perspective of municipal affairs. In the Kenny report that was put together by the Senate there was a lot of comment about the need to better assist municipalities, both large and small, to deal with these disasters, whatever type of disaster, on the front lines, from a prepare-prevent mitigation perspective. From the municipal affairs perspective, do you have any comments on the role of our provincial municipal affairs?

Ms Jardine: Of course, there is the program that municipalities are now responding to in terms of the essential to enhanced levels of preparedness. I would have to say that most municipalities are moving and many in fact have moved a very long way to respond to that.

Looking at it from the disaster relief perspective, again, it's looking at the nature of the hazards and the range of impacts on your population. I think that is one of the areas that we look at broadly; not just the immediate impact of the disaster, but you need to look at the longer-term effects and the broader effects in the community. I think municipalities, as they move through the levels of their emergency plans and programs, will be doing that, as we will at municipal affairs. It is potentially costly to begin to look at that, but I think that's a fundamental way. You need to look at what the impacts are and how you're going to accommodate those.

To explain this better, looking at a public health disaster, if you have to quarantine a lot of people, you've got to look at what the reverberations of that are in the community and how you're going to respond. So it's the level of sophistication in your plans and programs. I think we're all in the situation that we're moving through those levels and each go-around we're understanding more and more how effectively we can deal with a range of different types of disasters.

Ms Broten: One of the things that appears to have been a conclusion by Senator Kenny is that the province has a role to play in terms of R&D, technology, training, equipment, especially for smaller municipalities that will just simply not have a whole emergency team available. They will in many instances be turning to the province for that type of assistance. Can you comment about that?

Ms Jardine: That's probably something that Emergency Management Ontario could comment on better than I. They have their community folks out there and have a better handle on the situation on the ground. I think certainly our experience at municipal affairs has been that once we get into the north or into remote communities, we do play a role. In the northwest floods we set up the disaster relief office in Fort Frances and we had that office staff up there for six months, handling the relief claims and assistance in the community.

1340

Ms Broten: Just one last question in terms of compensation and the disaster assistance program: During the blackout was there ever contemplation of claims being advanced through this program as a result of losses that were faced that may or may not be natural, but certainly there's always an argument to be made whether there was sewage that needed to be dumped into a river? Does that qualify as natural? And looking at whether or not this program needs to be replicated in terms of a different type of format for non-natural disasters or whether it's pushed to its limits.

Ms Jardine: You may remember that the previous government did announce a program for municipalities and indicated that their costs in relation to the blackout would be covered. We never did get Management Board approval for the funds. Time wasn't available for that to happen before the election. When the new government came on board, then, the decision was made that, given the financial situation and the expenditures that

municipalities had, which were not overly large, we would not proceed with the program.

Certainly, you could foresee a situation where there was a blackout where there really were some extraordinary costs that individuals or municipalities experienced where the province may choose to, in an ad hoc way, respond and cover those costs. That's what we put in our other category, 4.

Mr Zimmer: I see in the document on ODRAP, "ODRAP provides assistance when damages are so extensive that they exceed the financial resources of the affected individuals, the municipality and community at large," and then they've got to make that assessment within 14 days. What I'm interested in is, it seems to me there must be a lot of ad hockery and a lot of subjective judgments brought to bear in whether an area, however it's defined, meets that standard that damages are so extensive that they affect the community at large. How do they go about making that judgment in 14 days under all the pressures of the disaster? We all have a sense of the disaster, but a lot of it is just the journalists' impression, the reporters, newscasts. There may be a lot of facts mixed up in it. There may be a lot of fear mixed up in it. How do you sort out the subjective from the objective when you come to an assessment that a disaster has occurred that is beyond the scope of individuals and municipalities and the community at large to cope with?

Ms Jardine: You're quite right. It can be pretty chaotic, especially in the first couple of weeks. That's why we put into place the provincial disaster assessment team, which is an interdisciplinary team that is not from the community. That team will come in and liaise with public works staff. Often we'll have staff from the Ministry of Transportation come in—they're very familiar with the costs for repair of roads, culverts, bridges. So they will be the ones who will help give us an assessment of what the costs are that the municipality is facing. It's not going to be accurate by any stretch, because sometimes until the waters recede you don't know what the damage truly is.

We also have a contract with an insurance adjuster who has both municipal claims experience as well as residential and small business experience. So they will go in and do an eyeball assessment and they'll talk to some of the key municipal people to get an understanding of what the private damages are.

Although it's not a science, we have tried to refine our ability to put forward reasonable cost estimates on what the damages are. Then, being municipal affairs, we do have staff in our regional offices who can assess the municipal financial wherewithal.

Mr Zimmer: If it's not particularly scientific—and I understand the problem there—it seems to me that there must be a lot of room for lobbying by local politicians, community leaders. How do you deal with the pressure of that lobbying exercise to have an area declared a disaster area? Clearly, there are real benefits that flow if it is a disaster area.

Ms Jardine: I wouldn't say we've had that as an experience, by and large. I think where we sometimes have difficulties in the declaration areas is where the damage is relatively small or where the damage might be caused by sewer backup, for example, and where the municipality may want to come forward to see if there are provincial dollars to help them out. I think the point that we've made in all of that is that we're here as a last resort. So it's family, then the community that should be responding, and then the province will come in, but only after it's demonstrated that you need that additional help.

Mr Zimmer: My last question—

The Acting Chair: Sorry, Mr Zimmer. We've got a couple of quick questions.

Mr Wilkinson: I'm just following up on Mr Hudak's question about the fact that traditionally we do not budget a line item for disasters. You have the \$1,000 line. I'm interested in knowing about other Canadian jurisdictions, other provinces, and whether the feds are doing that, just on the question of good fiscal management.

Dr Young has eloquently told us that we can expect more and more of this to happen. So the question we do have is that it's an unknown but it's a liability that we're going to have to face as a province, an increasing liability. Should we be setting aside money, whether it's through MAH or somewhere, to take into account that we know that this is going to happen; we just don't know where, when and how much? I'd be interested to know whether or not other provinces and the feds, in their budgetary planning, are actually setting money aside.

The Acting Chair: We can ask research to do that for us.

Mr Arthurs: Just procedurally, does the municipality or municipalities, each or all, have to declare a disaster area?

Ms Jardine: They request the Minister of Municipal Affairs—

Mr Arthurs: Plus the minister, a request.

Ms Jardine: Yes.

Mr Arthurs: Let's say there are four or five involved. Would it be necessary for all of them to do that for the minister to be able to declare the entire area?

Ms Jardine: No. We're fairly flexible. In the ice storm I think there were 66 municipalities involved, and we probably received requests from 45 or 50.

Mr Arthurs: But the minister effectively declared the entire area, for all practical purposes.

Ms Jardine: Yes, the entire area.

Mr Arthurs: There's not a necessity, though, for the head of council to declare an emergency situation for the ability of the municipality, as a council, subsequently to declare a disaster area.

Ms Jardine: No, there's isn't a link.

Mr Arthurs: That's not necessary. Thank you.

The Acting Chair: I have just one last question myself, and that is that you mentioned that one of the failings you found is that the federal government doesn't have a one-window approach, that it's difficult in deciding whom to go to and who makes the decisions. If

the municipalities in Ontario were to ask what our window is at the provincial level in Ontario, what is our window?

Ms Jardine: On disaster assistance, it's municipal affairs. We've certainly been out—

The Acting Chair: That's their first point of entry—contact with municipal affairs—not Emergency Management Ontario?

Ms Jardine: It might be, but we've been out and spread the word as much as possible. We've been on the road.

The Acting Chair: But the first point of contact in Peterborough was municipal affairs?

Ms Jardine: Yes. I can't say that that's a universal situation. In some cases, if there are financial inquiries, they may come to EMO first, who would then refer them to us.

The Acting Chair: Do you see what I'm getting at?

Ms Jardine: Yes, I do see what you're getting at.

The Acting Chair: As much as we can criticize the feds, I think maybe one of the duties of this committee would be to help your ministry and other ministries put forward the protocol, that one-window approach, and to define it a little bit better.

1350

Ms Jardine: Yes, I can see that. I think it works reasonably well. I think the information is out there. Emergency Management Ontario and our staff were on the road last year and visited virtually all municipalities across the province so that staff at the municipal level would know who has the financial side of the equation and who has the emergency response—

The Acting Chair: Certainly on the financial side they would know to go to municipal affairs, as they do for everything. They would know where to go to ask for money. They know that at the local level, I'm sure.

Ms Jardine: They wouldn't come to us.

The Acting Chair: On behalf of the committee, I want to also thank all the men and women who work at municipal affairs for the quick and comprehensive response they've undertaken in the Peterborough situation. I think they ought to be commended for that work.

Ms Jardine: Thank you very much. I'll report that back.

The Acting Chair: Please pass that on.

Ms Jardine: I will.

MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

The Acting Chair: The next deputation is the Ministry of Community Safety and Correctional Services: Jay Lipman, counsel, legal services branch; and Monique Guibert, senior adviser to the Commissioner of Emergency Management.

Mr Lipman, you may begin. Just identify yourself for Hansard, please.

Mr Jay Lipman: My name is Jay Lipman. I'm counsel with the Ministry of Community Safety and Correctional Services.

In attendance as well is Monique Guibert.

The Acting Chair: I wonder if you could have her sit at the table, please.

If you'd speak directly into the mike, it would help.

Mr Lipman: I thought the presentation today could follow up on some of Dr Young's remarks yesterday and focus in particular on the current emergency legislation in Ontario. The primary statute that I'll be talking about today is the Emergency Management Act.

There are two things I'd like to accomplish. The first is to take the committee through the legislative basis for all the work that Dr Young was talking about yesterday in terms of preparedness, in terms of a proactive approach to emergency management.

The second is to take the committee through the specific provisions around emergency powers. You've heard from Dr Young, and you may well have heard from others at this point, that the emergency powers in the existing legislation are very weak. I thought it would be useful if we could take a close look at those provisions and see what they say and what they don't say.

You should all have a copy of the Emergency Management Act. I'll be referring to it.

First of all, in terms of preparedness, I'd like to refer you to section 2.1 of the act, which is at the top of page 2. You may recall Dr Young discussing how we amended the emergency legislation last year. The amendments came into force last year. One of the big changes was a big shift away from planning to the broader concept of emergency management programs.

Section 2.1 establishes the requirement for municipalities to have emergency management programs. I can tell from the previous presentation that you've heard something about programs and so on, so I don't know if I'll get into a great deal of detail about them.

The requirements of a program are set out in this section. You can see that it includes a plan. It includes training and exercises with respect to the plan. What our program people have said and emphasized is that the plan is of limited value if there are not training on the plan, regular exercises on the plan and revisions of the plan. It includes public education—a public awareness component of emergency programs.

I think (d) is interesting in terms of the legislative mandate of the committee: "any other element required by" regulations. What we did in the legislation was provide a regulation-making power to deal with specific aspects or elements of both emergency management programs and emergency management plans. You'll recall Mr Neil McKerrell's comments yesterday when he was talking about moving from a basic plan or a central-level program to a more advanced program and then to a comprehensive program over a series of years. Legally we can do that by setting out those elements of the programs in the regulation. We don't have to change the legislation.

Mr Zimmer: Just for clarification, is this the act that followed the so-called McMurtry white paper?

The Acting Chair: This is the 2002 act, is it not?

Mr Lipman: There are elements of this act, originally known as the Emergency Plans Act, but it was amended substantially last year. You're correct: A number of the provisions have not been changed, so they are the same provisions that existed when the Emergency Plans Act was first introduced.

Mr Zimmer: I think that's what followed the so-called McMurtry white paper. I wonder, Mr Chair, if we might get a copy of that white paper.

The Acting Chair: Certainly. It's available through the Clerk's office. We'll make that available.

Go ahead, Mr Lipman.

Mr Lipman: These provisions I'm talking about now are as a result of the amendments, but you will see, particularly when we get to review the powers provisions later, that those have the more archaic flavour of the older legislation.

Subsection (3), in the middle of that page, sets out what is commonly known as HIRA, the acronym for hazard identification and risk assessment. When you're reviewing other legislation and policies on preparedness, you'll probably see that term or similar terms.

From a legislative point of view—and this is really the basis for what Dr Young was referring to in terms of that risk-based approach to emergency management: You're no longer making plans in a vacuum but you're specifically focused on certain risks.

Other legislation you'll be looking at—the recent Quebec legislation, the Civil Protection Act—is also a very risk-based approach, and there are comprehensive, quite prescriptive provisions there about emergency planning based on risk assessments and so on. Another jurisdiction you may want to refer to, in terms of a risk-based approach, is British Columbia. Their legislation, the Emergency Program Act—actually the risk-based program provisions are contained in regulation under the act, the emergency program regulation.

I just want to bring your attention quickly to the subsequent subsections there. What's interesting about them is that in reviewing other legislation, you won't find anything like this. There is no real precedent for these provisions. We realized, when we were requiring municipalities and ministries to do risk assessments, that part of that would involve identifying vulnerabilities; for example, vulnerabilities in their infrastructure. We realized that's sensitive information. It's not necessarily the kind of information you want everybody to know about. It's potentially relevant to things like sabotage and terrorism. So we tried to build in a certain degree of protection for that type of information. Just by way of background, at the time we did consult extensively with the office of the Information and Privacy Commissioner and they fully agreed to and supported the need for these types of provisions. Like I say, in reviewing legislation, you won't find something similar to this, and other juris-

dictions may well want to consider provisions such as this.

1400

In terms of emergency plans, as distinct from programs, section 3 of the act, which is in the middle of the next page—

The Acting Chair: What page is that?

Mr Lipman: Page 3. Prior to the amendments under the old Emergency Plans Act, municipalities were not required to have emergency plans. The act authorized municipalities to make emergency plans but it did not require them to make emergency plans. So it was discretionary in the amendments that we made to this section. It's now clear that all municipalities have to have municipal emergency plans.

Just to back up for a moment, the act essentially applies to municipalities and the provincial crown. In terms of programs and plans that I'm referring to with respect to municipalities, there are parallel provisions further on in the legislation with respect to the province. In terms of plans with the province, it's slightly different under the legislation. Rather than requiring ministries to have emergency plans, the act sets out a process whereby cabinet can assign emergency planning responsibilities to individual ministries. Again, based on the previous presentation, it sounds like you've heard about this OIC that assigns planning responsibilities to the listed ministries. In slide 19 of his presentation, Dr Young set out the list of ministries that are assigned emergency planning responsibilities by order in council under the authority of this section.

As part of the development of broader provincial emergency management programs—and Dr Young made reference to this—and a proactive approach, the intention is that, in addition to the 12 ministries which are responsible for emergency planning, all ministries will be responsible for business continuity planning. That may well be dealt with by the OIC under the authority of this section. So in addition to the 12 ministries, all ministries will be required to do business continuity planning. In addition, the so-called designated ministries will still maintain their requirement to do emergency response plans. Of course, the distinction is that an emergency response plan is more operational in nature. It deals with men actually dealing with the emergency on the ground, whereas a continuity plan or a continuity of operations and services plan addresses the continuity of the delivery of services.

In terms of emergency powers, if you turn to page 6 of the act, right at the bottom of the page, section 7 basically contains the entirety of both the framework for a declaration of a provincial emergency and the exercise of so-called special or emergency powers. The first thing you notice about section 7 is that it doesn't look like the usual framework for emergency powers legislation. As Dr Young mentioned, normally the statutes are all quite similar and what you have is a list or a range of powers, and those powers can be triggered or may be exercised only in a case of a declared emergency. In the case of

section 7 of the EMA, there really is no list of powers. There are a couple of powers that I'll get to, but certainly there is nothing like what you'd usually see in emergency powers legislation.

There are a couple of other odd things about this section. Under the act, it's the Premier who makes the declaration of an emergency. That's unique in Canada. In all other jurisdictions, it's either the cabinet or a minister. It's usually the minister who is responsible for the administration of the legislation.

One of the matters that Dr Young raised yesterday was this issue of a fallback provision in the event that whoever is primarily responsible for declaring emergencies is unable to do so. The idea is that there should be a fallback position. That is not unprecedented. There are a number of legislative models for that. In particular, the recent UK legislation, the Civil Contingencies Bill, provides that in the first instance it's the Queen who makes a proclamation, rather than a declaration, of an emergency, but if the Queen is not available, then the Secretary of State may make the proclamation.

You should pay attention, if you're considering that type of model, to the kind of tests that would apply that would allow this delegation to be triggered. In the case of the UK legislation, the test is that it would not be possible without a serious delay for the Queen, in that case, to make the proclamation.

Another interesting element about the declaration process under the EMA—and we talked about this a bit yesterday—is that the EMA does provide for a declaration that only applies or extends to part of Ontario. What's a little unusual, again, about this provision is that normally—and it's not unusual to have a statute that provides for a partial type of declaration. Normally you have further provisions that specify that any powers that are exercised with respect to the declaration only apply in that part of the emergency area. So while the EMA does provide for a partial declaration, it doesn't take that further step of saying that in that case powers would only apply with respect to the part of the emergency area, the part of the province.

In terms of the nature of the powers, subsection 7(1) contains some quite substantial language, some rather sweeping-sounding language. The Premier may take such action and make such orders as he or she considers necessary. I think the view that this is a centralization of powers is reinforced by the white paper that was read into the record yesterday, which talked about relying on existing powers. In fact, there was no intention to confer additional or special powers by these sections.

The idea that the sections or the provisions merely centralize is reinforced by subsection 7(2), where it says the Premier "may exercise any power or perform any duty conferred upon a minister of the crown or a crown employee...."

This is the point that Dr Young is making, that for the most part section 7 of the Emergency Management Act centralizes existing powers but doesn't confer special

powers, the types of powers that you normally see in emergency powers legislation.

Subsections 7(3) and (4) are, in a sense, certainly unusual. They are broad powers to direct a municipality in the event of a provincial emergency. As far as I can tell, there is really very little precedent in any other legislation for these types of powers, directed as they are solely at municipalities. Again, these types of powers wouldn't be necessary if there was the usual approach of general powers, not specifically designed toward municipalities or any particular entity, but rather, again, the usual list of powers.

1410

I do want to refer briefly to section 7.1 of the legislation, starting right at the bottom of page 7. When we did the amendments, we did actually consider special powers, and this provision was included as part of the amendments that came into force last year. While the section has all the hallmarks of typical extraordinary powers provisions—it creates an order-making power by cabinet; orders under the section can override existing laws; the power is only triggered in the event or in the case of a declaration of an emergency—the scope and focus of the power is very narrow. If you look through it, you'll see that the power may only be exercised to assist victims of an emergency—which is good, but on the other hand there are a number of conditions that must be met and the power is specifically designed to eliminate existing obstacles, legal instruments and to overcome those to allow compensation or benefits to flow to victims of the emergency. So while it is, in a sense, a sort of extraordinary power, it's very narrow. Similarly, if there were an appropriate or proper framework for emergency powers in this legislation comparable to other jurisdictions, section 7.1, as with section 7 in its entirety, would be rendered redundant and would be captured by the usual approach.

I just want to touch on one more matter because we talked about it yesterday. It has to do with nuclear emergencies. I'd like to refer the committee to section 8 of the legislation, which is the middle of page 10. There was some discussion yesterday about jurisdictional issues with respect to nuclear facilities, and certainly the federal government is responsible for nuclear safety and security at the facility and there is a regulatory body that makes rules and orders with respect to nuclear safety and security. The province, however, is responsible for the so-called off-site effects of a nuclear emergency. In order to address that, the legislation provides that cabinet must develop a nuclear emergency plan. Cabinet has in fact developed and approved such a plan. That plan is administered by the Ministry of Community Safety and Correctional Services, which works with federal agencies, facilities and the municipalities.

Section 8 does contain quite extensive powers with respect to municipal emergency plans and the requirement that municipal emergency plans must conform with the provincial nuclear emergency plan. That section is the

legislative basis for nuclear emergency planning in Ontario.

The Acting Chair: Is there reference to nuclear specifically?

Mr Lipman: Yes.

The Acting Chair: OK, I see, in section 8.

Mr Lipman: Section 8, yes.

The Acting Chair: Thank you.

Mr Lipman: Those are all my remarks.

The Acting Chair: Thank you very much. Questions or comments?

Ms Broten: I want to ask a couple of questions with respect to the enumerated emergency powers in contrast to powers that may be available under the current drafting of the legislation.

Looking at the power given to the Premier in section 7, certainly the language of the document seems expansive. We heard earlier today, for example, that the Ministry of the Environment could enter on to a private property and build a dike in the event of a flood, and that's one of the issues Dr Young raised with us yesterday.

One of the issues I would like some clarity on is how it is that there's a desire to have these more specifically enumerated, because in your legal opinion or analysis of this statute there would be a challenge made if there were an attempt to claim that more expansive powers were available under section 7.

For example, it would seem to me that there must be statutory provisions that allow for firefighters to enter into homes without a warrant. We see that happen all the time. Why could we not, under the current provisions of this legislation, bring that power up to a higher level under subsection 7(2)?

Mr Lipman: That's a good point. Just to back up, there are a number of reasons why relying on existing powers may not be appropriate. One of them is that there may not be an existing power. That was the experience in the SARS emergency, as Dr Young discussed yesterday.

There are also advantages to centralizing powers. To the extent that there may be existing statutory powers that are relevant to managing an emergency, they may be exercised by different bodies, different institutions, different ministries, and there may be conflicting exercise of those powers. So there are a number of reasons why centralized broad-based power is important.

Ms Broten: At the time section 7 was added into the legislation, was there a comprehensive analysis done of existing powers in other statutes that were essentially being allowed to be exercised by the Premier by way of subsection 7(2)?

Mr Lipman: Section 7 was enacted back in 1983, and I'm not familiar with some of the legislative history to section 7. But certainly there were legislative models based on the list approach at the time in 1983. I don't know exactly why, but for whatever reason, at the time they decided not to follow those models.

Ms Broten: Has anyone in your ministry, for example, as you undertake the analysis of what legislative

changes you might like to see, recently undertaken an analysis of what powers already exist in other pieces of legislation?

Mr Lipman: Yes, and I think part of that is set out in Dr Young's presentation. You will recall there was a chart that showed which powers exist in which jurisdictions.

Ms Broten: That's not what I'm talking about. What I think this committee needs to do, if it hasn't been done, is look at the various pieces of legislation that exist that give powers to various actors of the state, at whatever level, and by way of section 7 could be conferred upon the Premier; what employees of the crown under the many various pieces of legislation out there have the power to do what. That's the only way you can analyze what power is being conferred by subsection 7(2). My question is, has that been done?

Mr Lipman: It has not been done in our ministry, to my knowledge. I think what you're saying is that what you would want to see—and I understand why you would want to see this—is a sort of survey of existing powers of various statutory officials, for example, under the Forest Fires Prevention Act and under various acts. We haven't done that in our ministry, to my knowledge. The Ministry of the Attorney General is more actively involved in reviewing emergency powers and so on. I understand their presentation will deal with other jurisdictions and some more specific questions about emergency powers.

1420

Ms Broten: Perhaps if they don't answer our questions, we may come back to you for that analysis to be undertaken.

Mr Lipman: Yes, absolutely.

Mr Zimmer: I have two questions. You made the comment in your submission that generally section 7 centralizes the existing powers. There were no new powers created, and you added the thought that there were no new or usual types of powers that you'd expect to find in emergency legislation. Can you give me an idea of some of those usual powers that you say you'd expect to find in a piece of emergency powers legislation?

Mr Lipman: I'm going to refer to Dr Young's presentation. The last page of that presentation has a chart entitled "Emergency Powers Across Canada." What this chart shows is that there are a number of special powers that occur over and over again in the different jurisdictions. For example, the power to implement emergency plans occurs in nine of the 10 Canadian jurisdictions. The power to regulate or prohibit travel again occurs in nine of the 10 Canadian jurisdictions. So if you refer to the chart, you'll see that there are these recurring themes or powers that you see time and time again. I guess we should add that this is the same in terms of the UK legislation, the same sort of framework; a similar range of powers again in the Australian legislation. It's simply a recurring theme.

Mr Zimmer: That leads me to my second question. Your comment is that you find powers are needed. Other jurisdictions seem to have them. I'm just interested in

your comment now on the white paper that Solicitor General McMurtry prepared. In the white paper he argued that there was no need for new or defined powers, that there was enough power in the common law out there and in the existing statute base that if it was intelligently planned and used, you didn't need further defined powers. What would you say about that argument? I'm not saying I'm a proponent of that argument, but I'm interested in your view of that argument.

Mr Lipman: To follow up what Dr Young indicated yesterday, based on our actual experience in emergencies, we have identified these gaps. I think Dr Young yesterday mentioned directives that were issued during SARS and some ambiguity about whether those directives were authorized by any piece of existing legislation. I believe he made the same comment with respect to the blackout. It was not clear, if it became necessary to impose energy rationing or conservation measures, whether there would be existing authority for that type of order.

Mr Zimmer: What do you have to say about the McMurtry argument that those powers are already there in the common law and sprinkled throughout the existing statute base?

Mr Lipman: Like I said, based on our experience, it appears they're not necessarily there. Also, even if they are there, they may be exercised, as I said before, by different persons: by local officials, common-law powers exercised by the police and so on. What you could end up with is a real hodgepodge of powers that may be available rather than a central authority with broad order-making powers.

Mr Hudak: Thanks for the presentation. I was looking at some of the legislation you talked about—Manitoba, British Columbia and Alberta are the three I've glanced at—and it's quite stark. As you said, they enumerate the emergency powers.

The legislation is very clear. I have Manitoba's open. If a disaster is declared, they could:

“(b) utilize any real or personal property considered necessary to prevent, combat or alleviate the effects of any emergency or disaster....

“(d) control, permit or prohibit travel to or from....

“(e) cause the evacuation of persons and the removal of livestock....

“(f) control or prevent the movement of people and the removal of livestock....”

So they are sweeping powers.

Mr Lipman: Very typical.

Mr Hudak: From a practical point of view, if we were to take the existing powers that are in various pieces of Ontario legislation and you were to consolidate a list like that under an emergency powers or measures act, would it make any practical difference, in terms of responding to an emergency, whether they're resident in 20 associated pieces of legislation or if the exact same provisions were collected under one?

Mr Lipman: I think there are advantages to consolidating these things: ease of access, clarity about the

breadth of the powers and who can exercise them—those types of issues. On the other hand, if really what we're talking about is repeating existing powers, then, yes, there may not be that much of a difference. But what we're really going at is filling in those gaps that may exist.

Mr Hudak: As I said yesterday with Dr Young, there are really two paths the committee could choose to go down. One is better management of existing resources and the existing acts and clarifications, versus new or extraordinary powers under an emergency measures act. Your advice, like Dr Young's, is to expand the enumerated powers right in the act.

What are some of the lessons learned from SARS and the power blackout that would tell us that these gaps exist, that we do need to bring these powers forward?

Mr Lipman: Again, I'll just refer to what Dr Young said yesterday. The directives that were issued at SARS—what Dr Young indicated was that there was some ambiguity about whether those directives were authorized under existing legislation, particularly under health legislation. Because of that lack of clarity, there's an issue about authority for them, whether the provincial government really had the authority to make those directives which were, I think, agreed by all to be necessary and vital during the SARS emergency. The question remains about the authority for them.

Mr Hudak: Are there any particular examples that you could share with the committee of where these ambiguities occurred?

Mr Lipman: I think it might be best to raise those issues with the Ministry of Health when they do their presentation, in terms of the SARS directives.

Mr Hudak: OK.

Mr Lipman: There are certainly issues about to what extent public health legislation did in fact authorize directives that were made. But they could probably take you through some of the gaps that they have identified in terms of existing powers.

Mr Hudak: Were there areas outside of health—for example, on prices, functioning of businesses during the power blackout—or other areas you'd like to concentrate on, in addition to health?

Mr Lipman: The one I had heard of, in terms of the blackout, was mandatory rationing of energy, conservation measures and so on. My understanding was that there was also ambiguity about whether there was any existing authority under the energy statutes for those types of mandatory rationing.

Mr Hudak: Again, with respect to the other provinces, to refresh my memory, I guess the powers are quite—and it's a good thing—rarely used. Have there been any charter challenges or other court restrictions on the uses of those emergency powers?

Mr Lipman: Not that I'm aware of. Again, that might be something you could confirm with the Ministry of the Attorney General in their presentation, but not that I'm aware of.

1430

Mr Hudak: Here's another angle. Is the threshold any higher in these other provinces where the minister, I guess—it's usually a minister—has greater authority than the Premier would in Ontario under existing legislation? Is the threshold higher as to when a disaster is declared? Is the threshold higher in terms of the limits on how long a disaster could be declared for? I'll leave it at those two for now.

Mr Lipman: Those types of—

The Acting Chair: Excuse me, could you just speak into the microphone a little closer, please. Thank you.

Mr Lipman: Those types of things—the duration of it, when a declaration of an emergency can be made—are important in terms of accountability mechanisms. We've always said, as Dr Young said yesterday, that it's important, along with powers, to have built into emergency powers legislation the appropriate accountability mechanisms.

Section 7 of the EMA that I've just taken you through doesn't have anything in terms of duration of the emergency declaration, which is something you see in all jurisdictions. It doesn't have anything about renewals of declarations, and that's partly because there's no duration. But it doesn't have anything about a report to the Legislature, following the emergency, about the declaration and whether any special powers are exercised in the emergency.

Those vary between jurisdictions, certainly. And what you'll see, I think, in the more recent legislation is that there's probably a higher threshold—in other words, greater accountability mechanisms—built into the legislation as opposed to some of the older ones like Manitoba and Saskatchewan and so on. But that's not necessarily the case.

Mr Hudak: Maybe you can help me out. If there were a trade-off, if there were additional powers that were conferred upon the Premier or a minister in Ontario in exchange for greater accountability, is there a model piece of legislation, whether it's a vote of the Legislature, whether it's working with other parties? What kind of accountability mechanisms would be available, what kind of trade-off?

Mr Lipman: I'd prefer if the Ministry of the Attorney General, which has done more work in this area than I have, addresses these questions, but I can say that the key is to strike the right balance between powers and accountability mechanisms. I don't think there is a perfect balance. Certainly, you have to be concerned on the one hand about the operational issues. You don't want an accountability framework that slows down your ability to act. On the other hand, you want to make sure there are proper safeguards in place.

Mr Hudak: But your view, much like Dr Young's, is that that balance exists toward the side of more extraordinary powers as opposed to where it rests today.

Mr Lipman: From the ministry's point of view, we want to make sure that in an emergency our people—emergency management people, municipal first respond-

ers—are given every opportunity to do what they can to deal with the emergency. But at the same time, we certainly acknowledge and understand the need for an appropriate accountability mechanism.

Mr Hudak: I think the lesson of Dr Young's presentation was that another disaster, whether it's natural or man-made, while it may not be imminent, the likelihood is increasing. In order to best deal with the upcoming anticipated disaster of some nature, we need to provide more powers centrally, right?

Mr Lipman: That's true.

Mr Hudak: And you'd agree with the doctor's conclusion?

Mr Lipman: I agree certainly that when you compare it to other jurisdictions, the framework for powers in our legislation is just abysmal. So, I'd leave it at that.

Mr Hudak: OK. Thank you.

The Acting Chair: That's pretty clear advice.

Mr Kormos:

Mr Peter Kormos (Niagara Centre): Thank you to both of you.

Mr Lipman, you're legal counsel with the legal services branch at the ministry? For how long, by the way?

Mr Lipman: On and off for about 11 years.

Mr Kormos: Because I'm sort of interested in Dr Young's letter to Premier McGuinty. Have you seen the letter I'm talking about, the June 21, 2004, letter?

Mr Lipman: Yes.

Mr Kormos: I suppose it's natural he would write to the Premier, because although he's working within the Ministry of Community Safety and Correctional Services, he would perceive himself as answerable to the Premier. Am I correct in that?

Mr Lipman: I don't know.

Mr Kormos: You don't know. He did copy the minister, but he makes reference in that letter to three incidents that demonstrated limits in our current legislation. He makes reference to the 1998 ice storm, but of course that predated the current legislation by a few years.

Mr Lipman: The current legislation on emergency powers?

Mr Kormos: The Emergency Management Act.

Mr Lipman: As I explained earlier, the Emergency Management Act is really an amended statute of the previous Emergency Plans Act. At the time the amendments were made, no amendments were made to the powers section.

Mr Kormos: I understand, but I was here when that amendment was introduced. It was 2003. Mr Runciman was the minister then, or was it someone else?

Mr Lipman: Yes, I believe that was when the amendment was introduced.

Mr Kormos: I remember the press conference with the blue backdrop and the lights and the soundboard. I remember the press conference and the fanfare. Mr Runciman talked about having to respond to this new world—I'm paraphrasing him now. You may not have been there, but this is as I recall it. If you were there and

you recall it differently, say so. Mr Runciman was talking about the need for a comprehensive reform of our emergency planning ability, and he was announcing this new legislation. Do you remember that event?

Mr Lipman: No, I don't.

Mr Kormos: What I find curious is that the experience of the 1998 ice storm predates Mr Runciman's amendments of 2003. I appreciate that SARS and the power blackout postdate it, because there wasn't any reference to those. There was a lot of reference to September 11, in an oblique way, as you'll recall, because that was the bent of Mr Runciman.

What about the ministry's interest in the Campbell report? Is there interest in waiting until the final Campbell report is produced on SARS before the ministry draws any conclusions about necessary legislative amendments in terms of the SARS experience?

Mr Lipman: I can tell you that Dr Young, in his meetings with the SARS commission, has indicated, and I believe he indicated yesterday, that the commission is in fact looking at emergency management. Dr Young has indicated to the commission that he has concerns about emergency powers and this gap in emergency powers legislation.

Mr Kormos: So Dr Young—and again this is quite appropriate—specifically raised issues around the adequacy of the legislation with Judge Campbell?

Mr Lipman: That's my understanding, yes.

Mr Kormos: And Judge Campbell, as I understand it, is going to release his final report after a consideration of all the evidence at the end of this year?

The Acting Chair: At the end of August.

Mr Kormos: What's your understanding?

Mr Lipman: I'm not sure about the final report. Again, this is not my area.

Mr Kormos: Fair enough.

Mr Lipman: My understanding is that there may be an interim report in August or September of this year.

Mr Kormos: OK, an interim report. And you have no information about the timing of the final and conclusive report?

Mr Lipman: I don't, but probably representatives from the Ministry of Health might. Representatives from the Ministry of the Attorney General might as well.

Mr Kormos: The other interesting thing is that Dr Young became the Commissioner of Emergency Management, I suppose, after October 2. Is that your understanding? When did he become commissioner?

Mr Lipman: I'm told, April.

Mr Kormos: April of this year. In his June letter he writes to Mr McGuinty and says, "I believe that our research and analysis has evolved to a point where we can offer constructive and comprehensive advice to you concerning necessary legislative amendments to the Emergency Management Act." That's what he has in the letter. As counsel in legal services branch, have you been involved in the discussion around the advice that Dr Young would give to the Premier regarding necessary legislative amendments?

1440

Mr Lipman: Yes, and I think Dr Young indicated that we have had extensive discussions about emergency powers and emergency legislation.

Mr Kormos: Did you monitor Dr Young's attendance here yesterday?

Mr Lipman: Yes.

Mr Kormos: OK, good. So you heard what he had to say as well as everybody else. He made it very clear that the appendix to his letter, "Enumerated Emergency Powers Across Canada," was there for information only.

Mr Lipman: Yes.

Mr Kormos: As I understood, it wasn't to be construed as his wish list.

Mr Lipman: That's my understanding as well, yes.

Mr Kormos: But from the letter and from what you tell me, I'm understanding now that there are legislative amendments under development that do constitute Dr Young's—"wish list" isn't fair, but his recommendations to the government.

Mr Lipman: There have been discussions about emergency powers, including the appropriate emergency powers. I'm not sure that Dr Young is recommending any particular powers. What he's saying is that there is a gap in emergency powers legislation, and this gap should be addressed.

Mr Kormos: But he speaks very specifically about "comprehensive advice to you"—the Premier—"concerning necessary legislative amendments to the Emergency Management Act." I take "comprehensive" to mean comprehensive rather than vague. "Comprehensive" isn't the same as "vague," is it?

Mr Lipman: I don't know.

Mr Kormos: Come on. Let's work together.

Mr Lipman: I understand from Dr Young's attendance yesterday that the committee is fully intending to invite him back, and my suggestion would be that these types of questions would best be put to him. I don't have personal knowledge about what Dr Young was intending or thinking when he wrote that letter.

Mr Kormos: Ms Guibert, feel free to jump in any time, because you're the senior adviser to Dr Young. You can't get inside his mind, but what would he have meant by "our research and analysis have evolved to a point where we can offer constructive and comprehensive advice concerning necessary legislative amendments to the Emergency Management Act"? Do you know what he meant by that?

Ms Monique Guibert: I'm sorry, I think you'll have to ask Dr Young that question.

Mr Kormos: I just want to know whether you know what he meant by that.

Ms Guibert: I'm sorry, I don't.

Mr Kormos: Mr Lipman, were you counsel when the amendment that Mr Runciman put to the assembly last year was moved for first reading?

Mr Lipman: Yes, I was.

Mr Kormos: Were you involved in the drafting of that?

Mr Lipman: Yes.

Mr Kormos: Were you involved in the discussions prior to the drafting of it?

Mr Lipman: Yes, I was.

Mr Kormos: I'm curious, then. This is your legislation.

Mr Lipman: I don't take a proprietary interest in it.

Mr Kormos: You've got fingerprints on it. You received instructions that resulted in your drafting this, right? I'm not saying you're responsible for it, but you were involved directly in the drafting of it.

Mr Lipman: Yes.

Mr Kormos: As I recall, Mr Runciman, for whom I have—I trust you have the same affection for him that I do. I perhaps have known him longer than you, but I have a great deal of affection and regard for him, and I hope you share that affection and regard. Back in the spring of last year, Mr Runciman spoke of this amendment as the cat's meow. This was it. This was the answer to our shortcomings around emergency management, emergency planning. And now, my goodness, a year and change later—granted, you've got a different boss now: Mr Kwinter, somebody as likeable as Mr Runciman ever could be—you're part of the team that has come in here saying the legislation is sorely lacking. You are telling us it's sorely lacking, aren't you?

Mr Lipman: What we're saying is that there is a serious problem with it when you compare it to other jurisdictions on the emergency powers side of it.

Mr Kormos: But the ministry reviewed other jurisdictions and their legislation before moving first reading of Mr Runciman's bill, didn't they?

Mr Lipman: One of the things Dr Young mentioned yesterday was that at the time, emergency powers really weren't the focus of the amendments. People were more concerned with the preparedness side of things. It also appears there wasn't much attention given—I guess Dr Young explained quite well yesterday that we had become complacent in a number of areas. Certainly one of the areas was the nature and extent of our emergency powers legislation.

Mr Kormos: It's fair to speak of Dr Young now, in his capacity as Commissioner of Emergency Management, as a primary adviser to the government around legislative amendments in this area, isn't it?

Mr Lipman: I don't know.

Mr Kormos: We do know he wasn't in that role back when Bob Runciman was minister, was he?

Mr Lipman: No.

Mr Kormos: Who was the most parallel personality to Dr Young before Dr Young?

The Acting Chair: It was the crime commissioner, Jim Brown.

Mr Kormos: Oh geez, when he wasn't busy finding Santa Claus hookers out in alleyways off University Avenue. A sad, pathetic little person he was.

Mr Zimmer: On a point of order, Mr Chair: Don't take this the wrong way, but are we on five-minute cycles here?

The Acting Chair: No, we're not. The Chair has been trying to accommodate as many members' questions as possible.

Mr Kormos: I'll tell you about Jim Brown and the hookers later if you're interested at all.

The Acting Chair: Let's get back on emergency preparedness, Mr Kormos.

Mr Kormos: I'm just wondering what changed in terms of perspective, attitude, philosophy. You've helped a little bit by making reference to what Dr Young had to say between the preparation for Mr Runciman's much-heralded amendments and today. That's why I'm asking. I appreciate that Dr Young wasn't there; other people were. Maybe I'm naive, but I see Dr Young as being very critical in terms of being a source of advice to this government about necessary legislative changes. I hope I'm not being unfair in proposing that. Am I being unfair in suggesting that?

Mr Lipman: No, I don't think so.

Mr Kormos: So I'm wondering, because you've been there in the ministry, who was an adviser of equal stature to Dr Young helping Mr Runciman and his staff prepare the amendments that Mr Runciman presented for first reading back in 2003. Who played the Young role then?

Mr Lipman: I think the amendments that were developed in 2003 were primarily based on preparedness. The experts on that part of emergency management remain as they are today, in the office of Emergency Management Ontario.

Mr Kormos: How much time do I have, Chair? Do you want me to surrender and then wait for my turn in 20 minutes?

The Acting Chair: You have two more minutes.

Mr Kormos: I'll surrender for the moment and wait for my next round.

Mr Zimmer: Well, there's a first.

Mr Kormos: There you go. Put that in your householder, Mr Zimmer.

1450

The Acting Chair: Mr Lipman, I want to ask you one question. I think you've played an interesting role in that you've been there before and after the changes in legislation. Dr Young mentioned yesterday that he thought there was a need to make some legislative changes in terms of emergency powers, as those link with preparedness.

The one example we received from Dr Young was the need to have these powers in terms of a flood, for instance, where right now a government official could not access private property, perhaps in order to stop a flood from spreading by putting up a dike, because they would be charged with trespassing. Therefore, they couldn't do anything to protect the public interest, because they would need a warrant to trespass or even to enter a home to deal with an emergency matter. Yet this morning, the Ministry of the Environment official was very clear and unequivocal in saying that the Minister of the Environment has statutory powers to trespass, to enter private property—for instance, a plant that's spewing out

toxic chemicals—and possibly they were going to give us more definition in terms of a personal residence.

I guess what I'm asking you is, if certain ministries already have these powers and maybe others don't, is that really what we should be looking at, rather than, let's say, just doing something right across the board or just coordinating these powers more centrally? It seems, in the Ministry of the Environment's example, that these powers of entry without warrant already exist through a ministerial directive or order. She can do that right now. What do we have to give the provincial government more than that? Why is more required?

Mr Lipman: Again, I think it's important to be aware of the existing statutory powers, but based on recent experience, they're not always there when you need them. That's why you may need special powers that go above and beyond what's usually available. Somehow the definition of an emergency is "the status quo is overwhelmed." We're no longer able to deal with a situation with the regular powers that are available to us. It's almost the nature of an emergency. I think what Dr Young had in his slide package yesterday was that it's an extraordinary situation and sometimes you need the corresponding extraordinary powers to deal with it.

The Acting Chair: The other question is, as a couple of committee members have referred to, under subsection 7(1) of the existing legislation, which has been in existence since 1983, "The Premier...may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plans formulated under sections 6 and 8 and to protect property and the health, safety and welfare of the inhabitants of the emergency area." How is that limiting? In other words, here the Premier can take such action basically to protect the public interest in an emergency. How is that limited in what the Premier can do? How is the Premier limited?

Mr Lipman: It's a very good question, because at first appearance it does seem to be a broad, sweeping grant of power, but when you look at the section as a whole and at subsection (2), for example, which specifically talks about, "For the purposes of subsection (1), the Premier...may exercise any" basically existing power—if you look at the provision as a whole, I think it's quite clear that it's a provision about process, about centralizing existing powers rather than granting any additional ones.

The Acting Chair: I guess we'll have to have further explanation of that. At first blush I think I understand maybe the limits there. Anyway, we'll have time to discuss that further.

Mr Kormos: I'm wondering if research might—because it's well within my time. As I understand, the War Measures Act addressed as much the suspension of certain rights and civil liberties. Granted, that was pre-charter, not that that would necessarily make a difference, depending upon the government of the day.

Part of what's frightening about this is the talk about these broad-ranging, unfettered powers, which necessar-

ily presume a suspension or an abrogation, possibly, of fundamental rights and freedoms. To talk about the charter is naive because right now, for instance, in the criminal context—Ms Broten might understand this—there are certain things that can't be grieved that are conceivably charter issues because they're done and over with so quickly that you don't have time to get the issue before—it's done and over with. The issue is *functus*, so to speak. The abuse of, let's say, three-day adjournments by justices of the peace: Some of them, in my view, have potential for being grieved by way of litigation under the charter, but practically they can't be because the three days are over before you're going to get before a court.

The charter has a role, but it may not be very much of a practical role. So what I'm interested in is some broader understanding of giving new rights to a personality within the government—to wit, the Premier—versus suspending fundamental rights of citizenry, and whether there is a difference between the two, because I suspect there is. So I'd appreciate—obviously, that's not something they're going to come up with tomorrow.

The Acting Chair: Mr Kormos, if I might add, I think that's one of the reasons why—as the subcommittee met, one of the recommendations we made to committee is that we engage the services of an independent constitutional expert. You voted for it, I think. Oh, we never talked about it. Yes, but that was—

Mr Kormos: I think you've let the cat out of the bag, Chair.

The Acting Chair: We did talk about it, though.

Mr Kormos: I'm going to say to you, if you're talking about hiring independent counsel, are you out of your freaking mind? We've got the Ministry of the Attorney General, we've got competent lawyers coming out of our ying-yang, and you're going to talk about hiring constitutional experts? The government sends its Ministry of the Attorney General lawyers to court to argue complex constitutional cases, and you're talking about hiring one?

The Acting Chair: We have discussed this. I don't know in what context we discussed it, but the fact is that we thought—

Mr Kormos: I think it was a caucus meeting, not a subcommittee meeting.

The Acting Chair: No, it wasn't a caucus meeting. It was an attempt to deal with this very issue, where we wanted to get the best advice possible if these issues did arise, because in some cases perhaps legal counsel representing a certain ministry might be the ministry that would be granted these extraordinary powers. So it would be a lot more, let's say, independent and removed from the ministry if we had someone who didn't have a vested interest in being part of that ministry giving us advice on whether that ministry should have the extraordinary powers or not. That was the discussion.

Mr Kormos: In caucus.

The Acting Chair: No, not in caucus.

Mr Kormos: Was it held at a subcommittee meeting yet?

The Acting Chair: I thought it was a subcommittee. Ms Broten could maybe explain it. I told Ms Broten about it.

Mr Kormos: It's the one you plan on holding at the subcommittee meeting after this session's over this afternoon.

The Acting Chair: No, it wasn't. It was—

Ms Broten: No, Mr Kormos. It was with respect to the expert panels that we'll be calling before this committee. We put a number of constitutional lawyers on the list, you will recall.

The Acting Chair: It was the day you left early. That's when it was, and Mr Dunlop—

Mr Kormos: But at the subcommittee, though, you want to talk this afternoon about retaining independent counsel for the inquiry, right, for this committee hearing?

The Acting Chair: Yes, and it was a subcommittee where Garfield was here, and myself. You had left early and we went on to discuss this informally. That's what it was.

Mr Kormos: Oh, OK.

The Acting Chair: But I thought it was in this room.

Mr Kormos: But there is going to be a subcommittee meeting this afternoon.

The Acting Chair: Yes, there will be.

Mr Kormos: And we are going to talk about the committee hiring independent counsel.

The Acting Chair: We're going to talk about that, yes.

Mr Kormos: I'd repeat my earlier comment, but I'll—

The Acting Chair: Thank you very much, Mr Lipman and Ms Guibert, for your presentation. It was very informative.

Any other matters before we adjourn?

Mr Kormos: You weren't going to rotate?

The Acting Chair: No, because we went around once. We took extra time for each person.

Interjection.

The Acting Chair: We'll be talking about that later. OK? Move adjournment.

The committee adjourned at 1458.

CONTENTS

Wednesday 4 August 2004

Emergency Management Statutes Review	JP-31
Ministry of Agriculture and Food.....	JP-31
Mr Don Taylor, assistant deputy minister, research and corporate services division	
Dr Maurice Bitran, director, innovation and risk management branch	
Ministry of the Environment.....	JP-38
Mr Michael Williams, assistant deputy minister, operations division	
Mr Gary Zikovitz, emergency management coordinator	
Ministry of Municipal Affairs and Housing.....	JP-44
Ms Diana Jardine, director, municipal programs and education branch	
Ministry of Community Safety and Correctional Services.....	JP-50
Mr Jay Lipman, counsel, legal services branch	
Ms Monique Guibert, senior adviser to Commissioner of Emergency Management	

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Emergency Management
Statutes Review

**Comité permanent
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 5 August 2004

Jeudi 5 août 2004

*The committee met at 1001 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): Good morning. I'll bring to order the standing committee on justice policy dealing with the review of emergency management statutes in the province of Ontario. As you know, we're dealing with various government ministries, trying to review their mandates and statutes to see if they are adequate in terms of meeting emergency situations, whether it be SARS, a blackout, the Peterborough flood or other potential emergencies that may arise in this province.

We're bringing forth a series of expert witnesses from the various ministries. We've heard from Dr James Young. We've heard from the Ministry of Community Safety and the Ministry of the Environment. Today we have other ministries, and in the week following next week we'll be having a series of expert panel presentations from right across the province in terms of their emergency preparedness and their input.

Following along that line, today we have three presentations, the first one being from the Ministry of Natural Resources. Later on will be the Management Board of Cabinet and thirdly the Ministry of Labour. For today's first presentation, from the Ministry of Natural Resources, we have Mr Jack McFadden, who is director of the aviation and forest fire management branch, and Michael O'Brien, emergency management coordinator.

I should just let the committee know that we're always open to more suggestions of individuals or groups that would be helpful to the committee. I know our discussions yesterday prompted some potential contacts that might be helpful. Since we've heard about more of these 300-year storms in Peterborough, we're also going to ask a climatologist to come before us and talk about the long-range impacts of climate change.

The 9/11 commission in the United States cited one of the principal failures of American institutions, in terms of providing for and possibly helping to avert tragedies like 9/11, as a real lack of imagination in American institutions. So I suggested to the clerk that we also perhaps contact some futurists or some authors or academics who are into projecting future trends and events that perhaps

have not occurred in the past, that sometimes seem far-fetched but do occur.

Mr Peter Kormos (Niagara Centre): You're not talking about these late-night 1-800 services—JoJo or something?

The Acting Chair: What was her name?

Mr Kormos: I don't know; JoJo.

The Acting Chair: No, I think we want someone with a bit more substantial credentials.

We are open to more suggestions from committee members, and we've left some flexibility in the schedule for that reason. So if you've got suggestions for the committee and the clerk, we will try to do our best to contact them.

MINISTRY OF NATURAL RESOURCES

The Acting Chair: The first presenters are Jack McFadden and Michael O'Brien. Essentially, we're doing this for approximately a half-hour. If you want to leave some time for questions and answers, that would be preferable. That's what most deputants have done. You may proceed. Identify yourself for Hansard, please.

Mr Jack McFadden: My name is Jack McFadden, with the Ministry of Natural Resources. I want to thank the members for allowing me to speak to the standing committee this morning and talk a little bit about the Ministry of Natural Resources' role in emergency management. Hopefully, you have in front of you a copy of the brief, nine-slide presentation that we left with the clerk. I believe the actual presentation will take about 12 minutes and leave lots of time for questions afterwards.

You can see from your copy of the presentation that the focus of the presentation is really to provide members with an overview of the Ministry of Natural Resources' historical involvement in emergency management, as well as a bit of a summary as to what we see in the way of implications of the new Emergency Management Act.

I understand that the committee is particularly interested in the statutory powers that are in place now with regard to emergency management. You'll see in the presentation, as I get to that, that we have done an internal review of the emergency management situation in the Ministry of Natural Resources, particularly the implications of the new act. There is some reference in that internal review to legislative authority, but frankly we're still in the process of looking at that legislative

authority and the powers related to that. Our focus right now has been on meeting the requirements of the essential level by December 31 this year. So we're on an operational focus, and it may take us a little bit longer to complete a full analysis and evaluation of the legislative implications.

If you will, I'd like to briefly touch on some of the elements in the presentation. I don't expect to go through it detail by detail.

The first slide indicates some of the historical involvement our ministry had on this before the year 2003. We've had involvement across the Ministry of Natural Resources. We've been involved annually in emergencies, some of these being relatively small, where the ministry assists with local emergencies, but others being very significant, such as the two declared provincial emergencies where the ministry has had a role.

There's a little note there that we deal with evacuations in support of the federal government, as well as provincial institutions, and have dealt with numbers averaging about 1,200 residents a year related to evacuation, flood or fire.

We have over 200 Ministry of Natural Resources staff involved annually in emergency management activities, but I'm quick to note that a lot of these are several hours of one person's time or a couple of days of someone else's time on an ad hoc basis. We've added it up in our internal review and it only comes to about 19 FTEs across those 200 individuals.

We rely very heavily in the delivery of Ministry of Natural Resources emergency management services on our district staff located in the field, conservation authorities in Ontario with whom we have a partnership and the forest fire management program that's operated through my branch.

The ministry's staff have been actively involved. Due to our decentralized operation, we have offices scattered throughout Ontario. We have major responsibilities, as I mentioned, for annual emergencies related to floods, fires and on occasion draught, and we are a major supplier of expertise and equipment to other provincial lead agencies.

1010

If you'll turn to the next slide, there's a list. I won't go through this, but you can see on the left-side list a wide variety of staff skills that the ministry has to provide in our delivery of emergency service or in the delivery of emergency services to other ministries in Ontario. In fact, our fire staff have provided those technical skills out of province to other provinces in Canada, and more recently to the United States.

On the right-hand side of that slide, you can see some of the equipment, ranging from our fleet of 33 aircraft through various specific equipment and supplies that are available to assist in our delivery, again, or in the delivery of other ministries.

The Acting Chair: Excuse me, Mr McFadden. It might be helpful for the committee and people watching on television just to review some of the technical skills,

to give us some examples, and some of the equipment you might be using through the Ministry of Natural Resources so the public has a better awareness of some of the things you are doing.

Mr McFadden: Certainly. I can take a moment to do that.

The Acting Chair: Would you, please?

Mr McFadden: With regard to the skills, we have a number of skills associated with weather forecasting. We have meteorologists on staff to analyze weather patterns that are moving into the province and give specific analysis as to the types of hazards that may exist or the types of events that may occur as a result of weather moving into the province. This is useful primarily to the fire management and flood management responsibilities of my ministry, but certainly other ministries can access the weather interpretive services and gain from that.

From the weather forecasts, we do get into more detailed flood forecasting, and the ministry has a responsibility to work with conservation authorities in Ontario, our district offices and others to provide an actual interpretation of the potential for flooding conditions in various locations in Ontario.

We have had extensive experience and offer some expertise in the area of GIS—geographical information services—and the associated base mapping and interpretive mapping, where hazard-prone areas, for example, might be mapped and identified, or during an emergency we'd have the capability to assist with mapping of the particular geographic area that's affected by an emergency or, in fact, through some of the other data layers, be able to identify specific features etc.

Because we have, on the equipment side, a fleet of aircraft—the government's aircraft—we have skilled pilots and skilled staff dealing with the tracking of aircraft and identifying particular patterns and the whereabouts of government aircraft, so we would have the ability to analyze which aircraft might be able to move most quickly to a particular disaster site or emergency.

We have radio telecommunications equipment on the right-hand side of the list. We also have staff skilled in utilizing that equipment and setting up perhaps emergency uses of the telecommunications equipment.

We have, as a ministry, trained enforcement staff who have the skills as well as the authority to apply a variety of regulations and acts in the enforcement of emergency duties.

We have trained incident command teams that are typically set up and receive a good deal of work activity in the forest fire management program but are also available to use the incident command system for application to other types of emergencies other than forest fires.

I mentioned the pilots and their specific skills associated with resource management activities, and their flying skills, both fixed-wing and rotary aircraft. Those pilots are staff with the Ministry of Natural Resources.

Then we have staff who are skilled in a variety of small tools, if you will. Chainsaws quite often come in handy during emergencies, and a whole variety of other

small equipment, from hand tools to small types of heavy equipment like bulldozers.

We have program engineers available within the Ministry of Natural Resources who have normally years of experience in dealing with a variety of engineering issues, specifically civil matters associated with dams and other types of activities.

Generally, we've identified that the ministry has a response culture in the sense that we do deal with annual events in floods and fires and therefore have essentially an annual opportunity to exercise our skills and experience in emergency management.

On the equipment and supplies side, I mentioned aircraft several times. By "fixed-wing" I mean aircraft that have solid wings, as opposed to helicopters, of which we have seven in the Ministry of Natural Resources. We have a variety of field equipment, everything from weather gauging, weather recording stations to automated lightning strike indicators. Again, a lot of this equipment supplies information not just to the Ministry of Natural Resources but to other public agencies.

We have radio and satellite phone communications. These are not just office-based equipment but mobile equipment. For example, each of our fire crews has a mobile satellite telephone to provide them with emergency service and personal safety when they're out on the fire lines. We have pumps, hoses and sprinkler systems to deal with forest fires and protection of individual valuables. I mentioned chainsaws and hand tools previously. We have a fleet of ministry vehicles of all sizes as well as boats in a variety of sizes.

We generally order and secure large volumes of sandbags, which we make available to public agencies during flood conditions, and we have the GIS software and hardware, which I mentioned is available for mapping and geo-referencing purposes during emergencies and in preparation for emergencies.

We have forest fire management equipment inventory systems. We do have what I have to say is a very good system for monitoring our forest fire equipment. This is automated, and we have the software to manage that equipment and identify where it is, what it is and when it returns to its home location. As I mentioned previously, we do have a ministry with a variety of sites across Ontario, which comes in handy if you're trying to get to an event in an isolated location fairly quickly.

I hope, Mr Chair, that's an adequate review.

The Acting Chair: That helps, yes.

Mr McFadden: If you turn to the next slide, it deals with what I've been calling the internal review that the ministry undertook a year or so ago with regard to emergency management. We did look at the bill at that time, and now the Emergency Management Act, to determine its impact on the ministry. You'll see it was completed in January this year after about 12 months of looking at the assessment of the implications of that new act.

I won't read through, Mr Chairman, but perhaps I should just note some of the key components that the ministry examined in its review. We looked at the

organizational structure of the ministry with regard to emergency management. We looked at the policy framework in place. We looked at the emergency risk management process, with which I believe members are familiar; it's called hazard identification and risk assessment in the new act. Members might be particularly interested in the fact that our review did take a look at legislation and liability, not in a comprehensive way, but we have looked at that. The review looked at telecommunications, information and information management technology. It looked at communications in the sense of providing information flows back and forth, emergency response resources, training and education, critical infrastructure and assurance, as required by the new act, and we looked at our ability to do business continuity planning. There were a number of recommendations identified, which the ministry is now evaluating.

On the next slide, with regard to orders in council, the Ministry of Natural Resources has typically had three responsibilities identified by order in council. We've typically had responsibility for forest fires, for floods and for provincial responsibilities associated with drought. There are currently four new responsibilities that are proposed to be assigned to the Ministry of Natural Resources by order in council. This would add responsibilities for erosion, for dam failures, for petroleum well spills or gas well blowouts and also for soil and bedrock instabilities. We're not clear at this time about the workload or legal implications, but we do expect, for example, that the hazard identification and risk assessment for these four new orders in council may be extensive.

1020

If you turn to the sixth slide: a little bit on the legislative framework. MNR uses legislation to manage natural resources. The actual statutes that the ministry has probably number at least 45. That was the number identified in our internal review, so we use it under our own mandate.

Some of our control mechanisms are administered by other provincial ministries—for example, the Highway Traffic Act—or by the federal government—this would be the Fisheries Act and legislation such as that. We also rely on municipalities and partnerships with groups like conservation authorities to implement controls and the mandate of the Ministry of Natural Resources. As I said, our review looked at legislation but has really only scratched the surface, and we'll be returning to that.

Our next steps, as you can see: For each of the order in council responsibilities, we will identify by program area what the emergency potential is and evaluate that more fully. We'll look specifically at those statutes administered by MNR, we'll look at statutes and legislation implemented by other ministries and federal-provincial agencies, and we'll identify specific sections that relate to those four pillars of emergency management that are identified in the act. We're not there yet, but we will be looking at any gaps in legislation that need to be addressed in order to effectively administer the emergency management program of MNR, and we will

develop a strategy and an action plan to address any gaps that are identified.

The last couple of slides—I'm not going to dwell on this one, because I believe the members are already well aware of the requirements of each of the ministries and municipalities in meeting the essential-level requirements by December 31. There are several key areas there that we've identified. There are in fact 14 major responsibilities that have been identified for each of the ministries affected. There are 13 on the list there. The one that's also in place is the identification of hazards and the risk assessment for each of the orders in council. So we acknowledge that is another essential-level requirement. Unless members have not seen this list, I'll forgo reading through each of the 14 requirements.

The last slide in the package really speaks specifically to what I believe the members are most interested in; that is, the legislative and policy agenda. My ministry's focus right now is on meeting the 14 requirements on the previous slide. It's taking a lot of our time to address and make sure we have the ability to meet all those requirements by December 31 of this year, and that has been our focus to date. The Ministry of Natural Resources review, which I mentioned previously, did deal with a review of legislation, both current and proposed, and we have some initial recommendations on that. But as I mentioned on the last slide, we do want to look into that further and do the gap analysis.

Finally, as an example of emergency powers, the one reference I did bring forward is under the Forest Fires Prevention Act. I'm well aware of some powers associated with the ability under orders to restrict travel in rural areas—for example, in the area affected by a fire emergency—or to be able to put in orders that call for fire bans or things of this nature.

If that's sufficient, I believe I'm within my 15-minute window. I would be open for questions.

The Acting Chair: That's excellent.

Mr Kormos, we'll start with you.

Mr Kormos: You talked about December 31, 2004, as a deadline for the preparation you're doing. Will that include an assessment of the adequacy of existing legislation?

Mr McFadden: No. Specifically, the essential level requires us to look at the 14 components, none of which specifically require an evaluation of the existing legislation. But in fact, as part of the ongoing activities by the ministry to examine the impacts of the Emergency Management Act, we will be looking at that, not because it's an essential element by December 31, but because it's part of the ministry's ongoing evaluation.

Mr Kormos: Sure. I'm just reading the slide saying the MNR internal review identified the need to review legislation, current and proposed. So be it. That's not part of the December 31, 2004, deadline?

Mr McFadden: It's not a requirement under the act to do that review by December 31. That's correct.

Mr Kormos: OK, but it's being done nonetheless.

Mr McFadden: The ministry is looking at legislation as part of its ongoing reviews, yes.

Mr Kormos: And have you informally incorporated the December 31 deadline for that agenda item?

Mr McFadden: No, we have not. We will be looking at that. Without having established a deadline, I would expect that we would be looking at that in this fiscal year and hopefully have a full analysis of that aspect sometime after the December 31 deadline.

Mr Kormos: I raise that because—well, for instance, Judge Campbell is doing the SARS inquiry now, which presumably is going to have, once it's completed, comment on the adequacy of the current legislative regime around SARS. Similarly, your ministry, in undertaking this review, which is more than appropriate, will then reach some conclusions around the adequacy of legislation or the need for new legislation and some recommendations around that. That's why I'm asking what kind of deadline you've adopted, whether it's fixed or informal.

Just as my reference, Ms Broten, to the Campbell inquiry yesterday, here we are again: We have a ministry that seems to be doing a whole lot of work, and I take no quarrel with that, to arrive at some conclusions that are the same—or, rather, is the same exercise that this committee is purporting to do. So I'm wondering what the committee is doing, perhaps prematurely circumventing the work that MNR is doing, whether we should be looking at how we structure this committee's progress to receive the results of your review and analysis, to receive the results of the Campbell inquiry, and obviously other ministries, I presume, are going to be doing the same thing you're doing.

Mr McFadden: I would think so.

Mr Kormos: I would think so too. Do you have anything—perhaps you don't feel comfortable commenting on that. I mean, is it important for us to wait and see what you've got to say?

Mr McFadden: We have not established a firm date in looking at the legislative impacts, so it's difficult to assist you with indicating when the ministry would be able to deal with this specific item, but I expect it will take some time to do a thorough analysis. If we have at least 45 acts to examine, this is not something that will be done in a matter of weeks; it might take a while. I expect we would want to do a thorough analysis as a ministry to be able to come back and say, "Here's our gap analysis, and we have adequate provisions in place," or, "We need something special." I just can't put a time frame on when we'll be able to do that. As I mentioned, the focus right now is trying to prepare to make sure we can meet the potential regulations for December 31.

Mr Kormos: Sure. And between research and the Clerk's office, the photocopiers have been working triple duty preparing copies of all the possible legislation that could be considered. It's probably my failure to be able to read the index properly, but the one statute I can't find is the forest fire prevention act, which is the one you make reference to. I've asked Ms Broten whether she has

memorized that statute yet. She says no; she's working on it. She only has the first two pages in her memory.
1030

I took a look at British Columbia, and one of the things Dr Young referred to was that Ontario didn't have the capacity, the power, to press people into service. I call it the press gang statute. I remember working up in northern BC when I was a student and we assumed—

Interjection.

Mr Kormos: Working, I guess. I worked in the copper mines two summers in northern British Columbia. CAIMAW was the union, by the way.

We assumed—we didn't know; we assumed—that if there were a forest fire—we were young guys; it didn't particularly offend us—we would fight the forest fire. Probably some of us were looking forward to it, however naive that was.

What about the power in Ontario to press people into service around your area of MNR; for instance, forest fires? Does that power exist?

Mr McFadden: If I might, without sounding flippant, we have a problem keeping away people wanting to offer service. We have the luxury in the province of Ontario to have highly skilled individuals on staff on a seasonal contract coming in for the fire season to address the complex fire situations we have. We also have the ability as a ministry to bring on to temporary staff emergency firefighters, put them on as required. We also have contracts with a number of private sector suppliers of skilled services to do less critical work. I would call them type 2 firefighters. We have more than sufficient resources in most cases to handle events that come up, and we certainly have Ministry of Natural Resources staff who are not in the fire program who are also skilled and could be brought in to offer some of the higher skills or service skills.

Mr Kormos: You don't sound flippant, because that's exactly what I was referring to—our naive hope, however foolish that was, that there would be a fire so that we could do that. So I understand exactly what you're saying.

One of the things Dr Young notes is that Ontario doesn't have mandatory recruitment. I presume the capacity to press people into service is what he's talking about, mandatory recruitment. We don't have mandatory recruitment around firefighting.

Mr McFadden: No, we don't.

Mr Kormos: And I'm correct in reading the British Columbia statute, where it indicates that people can be called into service; that's the mandatory recruitment provision?

Mr McFadden: I haven't read that statute.

Mr Kormos: OK, fair enough. In your opinion, we don't need mandatory recruitment?

Mr McFadden: We currently don't have that requirement. We have sufficient skills available. Frankly, one of the difficulties we would have would be ensuring that the skills are adequate, and even the basic equipment and proper footwear and the ability to operate a hand tool—

sometimes it may be more of a challenge to have too many people available on a site without skills, without understand the command and control system that needs to be in place. So I would say that at this time we are adequate in terms of our ability to draw on resources.

Mr Kormos: And if anything, you're saying sometimes it could be problematic because it's not like in the movies. Watching a movie doesn't constitute training.

Mr McFadden: Yes, and there's certainly a set of skills. The other thing I should mention, and you're probably aware of it, is that there is a system available within Canada where we exchange skilled resources between provinces. This has worked out very nicely. This year, Ontario has had a less than average forest fire incidence and we've been able to share resources with other provinces. Last year in particular, we were able to dramatically help British Columbia. We had the largest contingent of non-BC firefighters in the province of BC. Ontario makes good use of its skilled resources. Where we can afford to loan or release these individuals to another province, we do that so they have adequate skilled resources to tackle a forest fire problem and do not have to rely on unskilled personnel.

Mr Kormos: Dr Young also notes that Ontario stands alone, at least in his analysis of the legislation, in not having the power to evacuate. Clearly that's something MNR has to address or concern itself with, especially, once again, around the area of forest fires. How does MNR currently deal with that issue?

Mr McFadden: We've had particularly good co-operation from municipalities and from First Nation communities, and as we assist those communities with their lead in evacuations, it's been working quite well. There's one aspect we do need to look at, and that's our ability to force individuals who choose to stay with their dwelling. At this time we do not have the capacity under our act to require an individual to leave their home for purposes of avoiding an emergency or potential emergency.

Mr Kormos: Is that problematic?

Mr McFadden: It hasn't been to date. As I say, municipalities have been quite helpful in assisting us, in a couple of cases, to remove individuals who wished to stay. In other cases, when we've worked with First Nations in the far north, tribal chiefs and senior First Nation representatives who are empowered in that area have been able to move the individuals to their satisfaction.

Mr Kormos: One of the other areas Dr Young notes is that Ontario stands in company with Nova Scotia as being the only two jurisdictions where there isn't the power to requisition property. I'm presuming that's again like in the movies, where the cop orders you out of your car so he could take my 10-year-old Chevy S10 to do some high-speed pursuit of bank robbers. Tell me how that works or doesn't work in the province of Ontario.

Mr McFadden: That one I'd have to look into in more detail. There are probably a number of statutes that might come close to giving that kind of power. But I

can't say I've looked into that, and our review didn't go into it in sufficient detail that—

Mr Kormos: Tim Hudak has a much newer and more expensive Chevy truck than mine. I urge people to requisition his before—

Mr Tim Hudak (Erie-Lincoln): It's getting pretty beat up, but—

Mr Kormos: It's the Wainfleet lifestyle; that's right.

Interjection.

Mr Kormos: Good for you. The feed mill, amongst other places.

Are you familiar with the letter Dr Young sent the Premier?

Mr McFadden: Only in the sense of having read some of the press coverage associated with it. I have not seen the letter.

Mr Kormos: OK, fair enough. Off the top of your head now, without having done the exhaustive work that the ministry is going to do: If you had to address maybe three areas of glaring legislative omission, what would come to mind?

Mr McFadden: I'd love to be able to answer that. I can't, not having done the review past the point of identifying a large number of statutes. Probably the closest I could come to answering the question would be to say, as a ministry, we probably need to take the opportunity to look at all the various statutes and do the further analysis. Probably the glaring need right now is for us to get on with looking at our legislative and regulatory ability to address emergency management. We've come partway. The answer I have is that the number one thing is, we need to continue with that evaluation, do the exhaustive evaluation, look at the gaps.

Mr Kormos: What you're telling me is, rather than me plaguing you with questions calling for knee-jerk answers, I should be leaving you alone so you can do the work you contemplate doing and have a final report from the ministry.

Mr McFadden: We'd love to have the opportunity to do that exhaustive evaluation and share it back. Right now, we don't have the ability as a ministry to answer the questions you're offering. We'd love to be there, but we just need a little bit more time to get there.

Mr Kormos: Thank you kindly. I appreciate your coming here this morning.

The Acting Chair: Ms Broten, then Mr Zimmer and Mrs Sandals.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Just to follow up on the questions that Mr Kormos was asking you: If we asked you at this point to focus specifically on the list of powers, the enumerated powers Dr Young highlighted that other jurisdictions have, and to assist us in evaluating whether or not we have those powers through the provincial government through other statutes—the issue that we are struggling with on this committee is examining whether the powers need to be in the Emergency Management Act or whether they in fact exist elsewhere. As you would know, the current Emergency Management Act allows the Premier to uptake

powers that exist at other levels. You don't know what power exists until you examine the other question.

1040

If we were to leave with you the list of the things we're looking at, would that be something on which we would be able to get some assistance from someone in your ministry within the next short period of time, if we focus specifically on some of these powers—for example, evacuation, and closing public and private establishments—and again only examining within the context of the statutes that you're governed by? Would that be something that we could get back from you within the next period of time—I guess two weeks or so—by the time this committee is examining these issues?

Mr McFadden: We'd certainly appreciate the opportunity to look at that. I'm just now looking at the list of powers that Dr Young has identified, having seen it for the first time. I believe we could give you something back in the way of an analysis—full and comprehensive, I'm not sure, but we would certainly be pleased to look at it and feed back some information.

Ms Broten: Thank you. We've done this with other deputants in the last number of days. They're taking away some homework, one might say, and will be getting back to us in writing perhaps with a list of the statutes you're looking at and specifically these powers. So that would be helpful.

I just want to ask you about Firestorm 2003, which was the provincial review that took place in British Columbia. Some of the things they highlighted in that review—I see you nodding, so I suspect you're familiar with the examination that took place there. Some of the issues they raised were the lack of interagency communication, the need to co-operate on training, the need to share information with other jurisdictions. They also focused on the lack of powers with respect to prevention—not dealing with something that's occurring at the time but on the prevention front. I'm wondering if those are issues that also exist in our province from your perspective.

Mr McFadden: We did take the opportunity to look at the film and the Firestorm 2003 review in BC. I did have staff take a look at the recommendations with regard to issues and whether in fact we had the same issues in Ontario. In a few cases, such as communication—you can never have too much good communication between agencies. We can always improve that. But in most cases we found, with regard to forest fire management, that our practices in place were adequate to meet Ontario's needs and I'm pleased to say in a lot of cases were better than BC's current ability. But there were certainly a number of cases—and I don't have the review analysis in front of me—where Ontario could improve its ability to deal with the recommendations from Mr Filmon. We are learning from that, and we will be acting on that. I believe there are some things that need to be done, yes.

The Acting Chair: I would just remind you, Ms Broten, that there are two other Liberal questioners ready.

Ms Broten: I just have one more question. A specific issue in the Firestorm 2003 review was clarification of police powers on evacuation. I just raise that for you when you're looking at your statutes, to consider whether that's also a concern in our province.

Mr McFadden: We will certainly look at that.

Mr David Zimmer (Willowdale): How does your ministry resolve jurisdictional conflicts when you've got an emergency?

The Acting Chair: Mr Zimmer, you need a microphone.

Mr Zimmer: Sorry. How do you go about resolving jurisdictional conflicts that the ministry may have; for instance, when it's fighting a forest fire and what you want to do is in conflict with another ministry or another authority? Who's got the final decision? Who's got the hammer in a jurisdictional conflict?

Mr McFadden: Good question. In the case of forest fire response, managing forest fires, we have an incident command system in place, which is consistent across Canada, by the way. That allows a predetermined command structure, if you will, so that first on scene has a particular role with regard to the fire, in this case, and then the command structure has a very specific arrangement with regard to who does what and under what conditions someone else would have powers. It assigns particular responsibilities to others who come into that command structure. So if there is a jurisdictional issue—and these are very rare, I should say at the outset—normally the incident command system will deal with it or our very active communication and our very active advance work with other jurisdictions allows us to sort it out.

Mr Zimmer: Is that system, in your opinion, working well now?

Mr McFadden: It's working very well.

Mr Zimmer: My second question is, is there any inter-ministerial coordinated effort to review emergency legislation; that is, your ministry, various other ministries and at the federal and municipal levels?

Mr McFadden: Probably the most direct opportunity for inter-ministerial work is through the various committees Dr Young's ministry has set up. We do have representatives from my ministry sitting on a number of different committees at different levels and, yes, concepts of legislation have been discussed at those committee.

Mr Zimmer: Thank you.

The Acting Chair: One question, Ms Sandals.

Mrs Liz Sandals (Guelph-Wellington): I've got a whole bunch. Let me pursue the question of evacuation, then. You noted that you do not have the power to force evacuation and that when you find people who are resisting evacuation, you turn that over to the municipality, which rather surprised me because I wasn't aware that municipalities had the power to order evacuation.

Mr McFadden: Perhaps I should clarify that. No, we do not turn it over to the municipality. What I was mentioning was that, in at least one example that I'm aware of, a municipality assisted us in pursuing the removal of some individuals. I believe that was more a matter of negotiation, and the fire chief in that example was able to impress upon the individuals the need to evacuate, with some suggestions around his powers and his interest in having them leave.

We typically would not expect a municipality or a partner to have the powers. I believe the power to force an individual to leave their home is something we need to look into. We do not believe at this time that our ministry has that power and we're not sure, without looking at the legislation, who does.

Mrs Sandals: In fact I suspect that what we'll find out is that no one does, but I just wanted to clarify.

The Acting Chair: It's the power of persuasion that they have, I guess, or the police officer may have.

Mrs Sandals: Yes, the power of persuasion at the moment but not an actual statutory power.

Mr McFadden: Right.

Mrs Sandals: One more question?

The Acting Chair: If you have further questions, could you put them in writing and we'll follow up with that, because I'm being too generous with—

Mrs Sandals: I was going to ask one that is a writing one. You've enumerated two powers here that you do have—

The Acting Chair: Sorry, one question.

Mr Kormos: Just keep going, Liz. You're doing fine.

The Acting Chair: Mr Hudak.

Mr Hudak: Actually, in a similar line of thought to my colleague—

The Acting Chair: He'll ask the question for you.

Mr Hudak: I'll try. I might have missed it.

I want to pursue the evacuation stuff a bit more. You said it's something you might want to look into. Are you strong about that? Is it something that you think you do need or you don't? You probably do this a couple of times a year with fires and such. You've had a couple of declarations of emergency. You probably would know if you need this power or not.

Mr McFadden: We definitely would be looking into that. I can't say right now. We need to look into it in a great deal of detail.

Mr Hudak: How about your colleagues in other provinces who deal with similar situations? Do they have the ability to order an evacuation, do you know?

Mr McFadden: We haven't specifically talked about that, but I expect they, and particularly British Columbia, are looking into that. I expect they have a similar feeling that they need to decide who should have that power.

Mr Hudak: Can you give some examples of where that could have been helpful in previous experiences of MNR?

Mr McFadden: In the fire context, we do run into situations where individuals will stay with their structure, either believing that the fire will not move in their

direction or with the intent to apply some sort of personal protection, a garden hose or something like that. In those cases, we have worked with the individuals and encouraged them and used the power of persuasion where possible. But in other cases, where it has been blatant that there is a risk to personal safety, I believe someone should be in a position to ensure that the individual's life is not at risk.

Mr Hudak: The other potential emergency powers—I think Mr Kormos talked about a couple—you don't see a need for those in helping address floods or fire? I have a couple of other areas like fixing prices, entry without warrant, establishing emergency facilities—those types of additional emergency powers.

Mr McFadden: I can't comment on that, quite honestly, until we take a look at it and we look through some examples. As a ministry, we want to look at all our responsibilities, not just forest fires. In the event of floods or drought, there are going to be different legal requirements or powers that may be required. Really, as a ministry, we're not in a position now to say that under that legal responsibility we do need a power to do this or that. I apologize. We're just not quite there yet.

1050

Mr Hudak: No problem.

Help me understand: Under the FPPA, do you currently have some powers to compel people to leave travel? What's the extent of your abilities?

Mr McFadden: We can request orders to restrict travel in a particular area—an emergency area order—or we have the ability to establish a restricted fire zone under an order to that extent. So we have the power to stop open fires. We have the power to restrict travel in an area which is subject to fire.

Mr Hudak: Have you had any problems in the past with abuse of those powers—any challenges through the courts, suits, that sort of thing?

Mr McFadden: Very little, if any. I'm not aware of any specific actions or reactions to our enforcement. I believe it has been respected.

Mr Hudak: Again, I know that some of my colleagues were on the same line. You were mentioning that you are currently going through the existing legislation looking to identify gaps. Is there anything that's triggered your mind to where some of those gaps may be to help inform the committee?

Mr McFadden: Not as yet. Frankly, we want to look at the four new responsibilities we may get. These are areas that, as yet, we really don't have a good feel for, things like erosion responsibility or dam failure. What are the implications? What does the existing legislation allow us to do? These are new orders in council. We haven't had those responsibilities previously. This may be an area where there may be more significant gaps to identify, because we haven't had experience there. These are the ones that I would suggest we need to look into in detail before I'd be able to comment.

Mr Hudak: OK. Fair enough. Thank you, Chair.

The Acting Chair (Ms Laurel Broten): Ms Sandals, I understand you have one follow-up question?

Mrs Sandals: Yes. On slide 8, you mention a couple of powers that exist in legislation. Could you provide us with a list of other powers that exist, coming at it from the other angle, which is what powers currently exist in legislation for the MNR around emergency powers? We've asked you about what you might want, but it would be helpful if we at least had an enumeration of what powers you have. That could be in the report that Ms Broten asked you for.

Mr McFadden: I could certainly do that, Madam Chair. I happen to have a copy of the latest edition of the Forest Fires Prevention Act with me. If there's difficulty getting copies, I could leave my copy. That does set out the ability to establish orders and shows the powers which we have under that act, if that would be useful.

The Acting Chair: That would be fine. If you left it with legislative research, that would be helpful for all of us. Thank you very much.

Mr McFadden: I'm just wondering if we could get clarification from one of the Chairs on the time we have to respond to the matters identified.

The Acting Chair (Mr Mike Colle): Yes. In fact, I was going to comment on that. The Legislature has given this committee instructions to submit its final report and introduce its legislation on or before November 1, 2004. Since this happened on the last day of the session, many of the ministries are working on a different timetable. So what we would like is potentially to get some interim information from your ministry dealing with some of the items on the back of the letter from Dr Young. Certainly some time in the first two weeks of September would be quite adequate, unless the committee thinks otherwise. I would think getting it by September 15 would be sufficient. We hope to get other updates from various presenters or ministries, and we're going to have to give a bit of latitude there. If we could get something of an interim nature by September 15, that would help us in our deliberations.

Mr McFadden: Thank you for giving us that time.

The Acting Chair: Thank you very much. That was a very helpful presentation, Mr McFadden.

By the way, I just say again, I know that your ministry has been involved with helping to deal with the BC forest fires. I think there are a number of Ontario fixed-wing planes out there. Have they returned?

Mr McFadden: The aircraft have returned. We have almost all of our personnel back from British Columbia, Yukon, and, most recently, Alaska, where we had Ontario firefighters.

The Acting Chair: On behalf of the committee, I'd like to thank the men and the women who have been helping fellow Canadians in their time of need. I think it's the type of thing that hasn't been in the press to any great extent, but demonstrates the need to co-operate between provinces. I want to thank your ministry for undertaking that co-operation.

Mr McFadden: Thank you, Mr Chairman. They're proud to do so.

Mr Kormos: It's a good thing those planes are back. How else would ministers travel?

The Acting Chair: The next presentation is from the Management Board of Cabinet.

Just to mention to members of the committee, the schedule you see before you has 20-minute intervals. I tried to be as generous as I could with questions for the first presenter. You've had an hour with the first presenter. We're trying not to go along party lines as much as possible, but we're trying to give everybody some time. So that was essentially three times the normal time allocated that was given to members of the committee to participate in questions. I know it's never enough time, but we're trying to do—

Mr Zimmer: And it's very cold.

The Acting Chair: That's the problem here. Being one of the victims, four of us acquired frostbite here last month and two of us had pneumonia as a result of serving on a committee in this same room. So talking about emergency preparedness, you should have gloves and mitts and coats if you come to room 151. That's something we should have warned the committee members about.

MANAGEMENT BOARD SECRETARIAT

The Acting Chair: We will proceed now with Malcolm Smeaton, the director of emergency management. And with you, Mr Smeaton?

Mr Malcolm Smeaton: Patricia Powell.

The Acting Chair: What is your title, Patricia?

Ms Patricia Powell: I'm program coordinator with the emergency management, security and contingency branch of MBS.

The Acting Chair: Management Board of Cabinet.

Ms Powell: Management Board Secretariat.

The Acting Chair: OK, thank you. Mr Smeaton, if you could begin.

Mr Smeaton: Thank you, Mr Chairman and members of the committee, for giving us this opportunity to address you. We come to you in somewhat of a unique situation as a ministry relative to all the other ministries you are likely to hear from around emergency management. Almost all the ministries, just as my colleague Mr McFadden indicated, have an outward focus toward the community, municipalities, the province and, in some cases, as Mr McFadden indicated, across Canada. Management Board has an internal focus. We do not have emergency management responsibilities in the community per se; our responsibilities are restricted to the internal government situation and the impact that emergencies may have on the government from its perspective as an employer and a landlord.

I have a relatively brief slide presentation and then, of course, I would be absolutely available at your discretion for any questions.

The government of Ontario and Management Board, under the various pieces of legislation, the Public Service Act, is the employer of all Ontario public servants. We have about 63,000 staff.

We are also, under the government services act, the building owner or operator of government buildings. We have about 7,000 buildings throughout the province that are either directly owned by the government or are leased by the government from private sector situations. Of those sites, around 3,500 buildings have staff who work in the buildings each day on a regular basis. The rest of the buildings are utility buildings or operational buildings that are not necessarily staffed on an ongoing basis.

1100

The unique responsibility we have under the Emergency Management Act and the order in council—which is, I might point out, a recent assignment by Emergency Management Ontario to Management Board—is for the continuity of government services during an emergency.

Several speakers from ministries that have already appeared, and Dr Young, have mentioned the business continuity planning process. For the first year of the three-year program that Emergency Management Ontario has asked ministries to deal with, our main responsibility is the development of a business continuity planning program for the government of Ontario. This ensures there's going to be government leadership and that critical services to Ontarians are provided during an emergency. Also included in that responsibility is the protection of cyber assets, both information and information technology.

I'm going to slide 4. What in fact Management Board does is establish policy for how government services and government employees will be dealt with during an emergency situation. We establish what we refer to as a corporate response centre so that ministries affected by an emergency situation are able to access a single point of contact, and through that we then advise, direct and support the government at large and the affected ministry officials on employee and service continuity issues related to the event.

We also, depending on the size and the nature of the emergency, then are the link with the provincial operations centre in Dr Young's organization, and we link with and support that organization as an emergency situation develops and ensure that we are able to support the lead ministry that may be involved in a particular emergency situation and support the overall effort to respond to the emergency.

Our day-to-day activity in relationship to responding to emergencies on behalf of government internally is of course to create and apply existing policy and to provide direction to resolve arising issues and concerns. Three brief examples: During the power outage last August, we led an effort to reduce power consumption in government buildings throughout the province.

In the recent Peterborough flood, we would have been involved. We had several government buildings in Peterborough and we would have been involved in assessing

those buildings for workplace safety and then determining when the government services that are provided are able to resume or be restored.

Going to an infectious disease scenario, which we've had to deal with recently, we would determine and provide direction on how government services would react to that situation and monitor the impact of the illness on government employees who may have been affected. This entails ensuring that there is a consistency of treatment across the system. We provide Qs and As to managers and employees addressing health and safety and compensation concerns. In a situation where we're responding to something like an infectious disease, we would provide information to our employees and managers on symptoms and on activities they can take to deal with personal protection.

Another example of that would be the West Nile virus program that's in place now across the province. We have the same activities with respect to our own employees and how they can deal with or respond to West Nile virus.

We would also be involved in resolving any labour-management issues that arise out of an event. So if there are problems, again, using the example of an infectious disease, and we find ourselves in a situation where we have to deal with work refusals, we would assist in the resolution of those work refusals by public servants.

On an ongoing basis during any emergency our branch would provide colleague ministries and all ministries with information on the status, what in fact is happening with respect to the situation, and any broad issues that affect the entire Ontario public service. We'd be providing senior management in government with updates on issues and the resolution of problems and future action that may have to be undertaken.

During and after emergencies, we would then provide ongoing information and assurance messages to the Ontario public service. This is normally done through letters from the various deputy ministers or from the deputy minister for Management Board to employees with the intent of allaying concerns about whatever the situation might have been.

One of the things that we have contributed across Canada, related to our response to various emergency situations that have affected the province and consequently Ontario government employees, is the information we develop—the materials, policies, protocols. We have consistently shared those with municipalities, with other provinces, with the federal government and, in some instances, with large private sector organizations. We determine what the public service policy is going to be in an emergency; in other words, what we can continue to provide to the public in an emergency situation; again, just thinking of the blackout last August, what services would be available. We deal with the issue of compensation for employees involved in something like the quarantine situation we faced in the last year or two. Of course, we deal, as I indicated, with the infectious disease workplace screening protocols we put in place to make

sure that the interface between the public and the public service is not putting either of the two parties into jeopardy.

With respect to facilities, Management Board makes the determination, if in fact they are non-critical services, that they can be shut down for whatever benefit it may have. An example, again, is the reduced lighting and power usage during the electrical blackout. We do then coordinate the post-event inspections to ensure that workplaces are safe for employees to return to.

Business continuity is, as I mentioned at the beginning, the key program that we are attempting to put in place in accordance with the December 31 deadline. We have had some significant progress in ensuring that all ministries have a business continuity program. We monitor what's going on across Canada and with the federal government in this area. At least at this point in time we are significantly ahead of most other provinces and, in fact, the federal government around the issue of developing business continuity and contingency plans to protect critical public services.

That is my last slide. I'm available for any questions.

1110

Mrs Sandals: I'm assuming that, while you're responsible as Management Board for maintaining critical government services during an emergency, you don't currently have any emergency powers per se.

Mr Smeaton: No, not outside of the OPS. We don't have any legislated emergency powers.

Mrs Sandals: For example, I'm looking on page 6 where you're talking about a situation in which you might have an emerging infectious disease and resolution of work refusal. It occurs to me that, in the process of maintaining critical government services, it may well be that the workplace conditions may change and the work hours required to maintain critical government service and the whole normal ethic and situation in which OPS are working could well change by virtue of the emergency. Have you or could you potentially run into problems in terms of having sufficient members of the OPS actually arrive at work or stay at work or needing to be reassigned out of their normal work situation? Do you have the power at the moment to require people to work in unusual circumstances?

Mr Smeaton: Yes. Under both the Public Service Act and our various collective agreements, we feel we have sufficient authority to reassign employees across the OPS to meet any need that may arise. For example, if an infectious disease scenario reduced the number of employees in a particular service or area of the province, we have the authority now under our various regulations etc to move people around and to make sure that those services are provided.

Mrs Sandals: Under the current legislation or collective agreements, in an emergency situation can you designate people as essential workers who would not normally be essential workers? That may be a bad term to use because it has a very labour or collective agree-

ment meaning. If you want to rephrase that in the proper words—

Mr Smeaton: We do have the ability to require employees to report and perform critical services for the province. For example, during the blackout last August, the decision was made by the government that non-critical employees would remain off the job and that employees whose work was determined to be critical were instructed to report to work.

Mrs Sandals: So you currently have that. Again, as with the previous people, I think it would be helpful to the committee if we had some understanding, in a little bit more detail perhaps, of that designation or the power to designate people as critical services and what powers you have to actually make sure that people are reporting to work in a critical situation, because one of our focuses in terms of ensuring that public safety is maintained is ensuring that the public service is functioning under emergency circumstances.

Mr Shafiq Qaadri (Etobicoke North): I'll just call your attention, Mr Smeaton, to slide 3. I was pleased to see the inclusion of "protection of cyber assets," because it's occurring to us that, in an information-intensive world, obviously all future disasters and emergencies are not necessarily flood-, fire- or mosquito-borne. First of all, I wanted to ask you, what is some of the thinking around cyber asset protection? For example, are you anticipating things like physical damage or hacking or identity theft or wireless upload? Is there duplication? If these types of information disappear, as happened, for example, recently in the banking sector, it seems to me everything would be at a standstill. So what is some of the thinking? Do you need more legislative power to execute?

Mr Smeaton: The process that's currently underway is an assessment process, using a threat-risk assessment or the HIRA process that EMO refers to, to initially identify systems across government that are high-priority systems that must be kept in place. There is then, for each of those systems, a threat-risk assessment done. That includes all aspects of threat, both physical—somebody walking into a server room and throwing a wrench into the servers—and cyber—somebody hacking from overseas or internally. All of those things are included in the threat-risk assessment, and then a designed response to those threats is put in place.

We have had a significant program in Ontario around the protection of cyber assets for some several years now. It's a fairly mature program. So we have had significant progress in that area.

The Acting Chair: Mr Zimmer?

Mr Zimmer: My questions have been answered, Mr Chair. Thank you.

Mr Hudak: Just one question I have on the emergency preparedness side: Do you still perceive from your contacts on the security side any threat to government buildings—the Legislature, anything that MBS has oversight for?

Mr Smeaton: We have regular reports provided to us, both through Dr Young and through the Ontario Provincial Police. I think it is fair to say there is a heightened awareness, both among government employees and government leaders, of the need for security in government buildings, but we do not have any information of specific threats, certainly organized specific threats, against government buildings in Ontario.

Mr Hudak: If I'd asked you that question a couple of years ago, would you have given me a different answer, or is it pretty much the same level of concern that you just stated?

Mr Smeaton: I think it's a fair thing to say that immediately following September 11 there were an awful lot of unknowns about how extensive threats were. Since September 11, I don't think we know all the answers on the security side, but there is more certainty. We have made some decisions and have adopted some approaches that have improved our security situation generally across government.

Mr Hudak: Dr Young talked about some assets where there would be higher risks than others. He talked about power supplies, for example, and international crossings. I don't recall if he mentioned any particular provincially owned infrastructure or sites.

Mr Smeaton: Certainly part of the program we're undertaking with respect to the business continuity planning process is an identification of critical infrastructure within government. Dr Young is asking ministries and participants in the private sector to look at critical infrastructure across the province, and he is asking us to look at critical infrastructure within government. We are including and have included that in our business continuity planning process.

An easy example is, of course, on the IT side, where we have large server rooms and large computer operations. Those have been identified and are undergoing, as I indicated to Mrs Sandals, threat-risk assessments and are in the process of being protected.

Mr Hudak: Are adequate resources set aside in a contingency fund, or what have you, for things like floods, a disaster relief assistance program?

Mr Smeaton: To be clear, that's outside. That's looking outward from government. My responsibilities are looking inside government. I do not deal with the issue of, "Are there resources available for the Peterborough flood?" or the ice storm or any of that. I'm simply not able to answer.

1120

Mr Hudak: But Management Board does play that role in allocating resources, right? We learned yesterday that if municipal affairs wants the funds for disaster relief, they come to Management Board and make the request. I think they only keep \$1,000 in the line item. For example, MNR, if they go over budget on fire-fighting, would come back to Management Board—

Mr Smeaton: Management Board does approve that, yes. But regrettably, I'm not privy to that process.

Mr Hudak: So the direct question would be: Do we have adequate resources set aside on a contingency basis in the current fiscal plan?

Mr Smeaton: I'm not able to answer that.

Mr Hudak: The last thing you brought up that I wanted to query you on is the power outage in 2003 and the success rate in reducing consumption in government buildings. I think there's now a general program to reduce power usage across the OPS.

Mr Smeaton: Yes.

Mr Hudak: How's that coming along?

Mr Smeaton: Again, it's not something I'm directly involved in, but I am aware that it is progressing and that there have been some significant gains.

Mr Hudak: Do you know by what level we've reduced our usage?

Mr Smeaton: No. I'm sorry.

Mr Hudak: OK. Thanks, Chair.

The Acting Chair: Mr Kormos?

Mr Kormos: No, thank you, sir. Thank you for coming.

The Acting Chair: Thank you very much, Mr Smeaton.

MINISTRY OF LABOUR

The Acting Chair: The next presentation is from the Ministry of Labour. We have John Vander Doelen, director, workplace insurance, health and safety policy branch; Marcelle Crouse, senior manager, employment and labour policy branch; Dr Ed McCloskey, director, occupational health and safety; and Ken Lung, solicitor, legal services branch.

Could you please identify yourself for Hansard.

Mr John Vander Doelen: Good morning. I'm John Vander Doelen from the Ministry of Labour, as indicated. I'm joined this morning by Marcelle Crouse, who will be jointly presenting, as well as my colleagues Dr McCloskey, who is the director of the occupational health and safety branch, and Mr Ken Lung, who is a solicitor.

The Acting Chair: If they could move to the bench there, it would be helpful, and you could begin.

Mr Vander Doelen: What we'd like to do for you this morning is give you an overview of both the Ministry of Labour's legislation that would impact or be impacted by an emergency, as we've evaluated it to date, as well as some of our operational response regarding our responsibilities to ensure worker health and safety during an emergency. In many instances, I'll paraphrase what's on the slide to get through it quickly, so that you have enough time for questions.

In terms of the review, as I mentioned, there are a number of statutes that we see being affected or affecting the ability to respond. They revolve around, in many instances, the conditions of employment, remuneration, and health and safety requirements for workers. In fact, we've identified four specific statutes that play a greater role in these: the Occupational Health and Safety Act, the

Workplace Safety and Insurance Act, the Employment Standards Act and the Labour Relations Act.

Specifically in terms of occupational health and safety, as an overview, it places responsibility on owners, employers, workers and supervisors around working safely and providing safe working conditions for workers. We see that as an imperative to be maintained during the course of workers responding to an emergency.

In terms of slide 4, there are specific responsibilities within the legislation placed upon owners, employers and workers. You can see that employers have some very specific duties, again, which in some instances we see as being not only an imperative but a challenge to maintain should workers be redeployed to respond to an emergency: training, competent supervision, proper and safe equipment, the workplace being free of hazards, and some of the administrative mechanisms that support health and safety in the workplace that are required by the legislation.

Moving on to workers, there's an obvious responsibility for them to work safely, but combined with that obligation, they have some rights. One of the issues that was referred to earlier by Mr Smeaton in his presentation is that workers, under the Occupational Health and Safety Act, have the right to refuse unsafe work. Slide 5 identifies some of the conditions under which that refusal can take place. As he alluded to, that sometimes presents operational issues under normal circumstances, or certainly potentially under emergencies.

Within the act there are limitations on the right to refuse for certain occupations where it's recognized that certain hazards are inherent in the work, and in particular where that is combined with the occurrence of a work refusal jeopardizing the health or safety of another individual. You can see on slide 6 some of the occupational groups where there is a limitation on the right to refuse, some of them being sort of obviously needed: police, firefighters, correctional workers and health care workers.

Moving on to the Workplace Safety and Insurance Act, many of you may be familiar with the act. Its purpose is to provide benefits for workers who incur injury or disease in the performance of work. While it does apply to the majority of workplaces, within the coverage provisions of the act certain workplaces are excluded from coverage. Some of the benefits for workers are wage replacement, medical treatment and rehabilitation. The system is funded by employers through a payroll premium that includes the risk related to the work. So higher-risk workplaces have higher premiums to pay. The premium is influenced as well by the health and safety record of the employer, so in poorly performing workplaces causing more injuries, employers pay higher premiums.

As to the specific area of the Workplace Safety and Insurance Act that has some provisions related to emergencies, those are highlighted on slide 8. You can see that where workers in some instances are redeployed as a result of either the Premier or municipalities declaring emergencies, those workers then start to be covered as

employees for workers' compensation purposes through either the province or municipalities. Similarly, in situations possibly linked to an emergency where an employer so-called "lends" employees to someone else to assist with an emergency—and we have seen that in some instances; for example, during the ice storm, where municipal hydro workers had to assist Ontario Hydro workers performing work—the Workplace Safety and Insurance Act addresses that as well.

At this point we'd like to move on to employment standards and labour relations. My colleague Marcelle Crouse will speak to those slides.

Ms Marcelle Crouse: As John said, I'll be discussing issues related to the Employment Standards Act and labour relations legislation.

As many of you will know, the Employment Standards Act establishes minimum standards of work for most employees in the province. Employers must meet these minimum standards or face penalties under the legislation. The standards that may be most relevant in an emergency situation are emergency leave, maximum hours of work and rest periods and, to a lesser extent, overtime pay.

Before I go into the relevant standards, you should know that limits on hours of work and rest period entitlements do not apply to some workers who would be important in emergency circumstances. These include crown employees; police officers; political, judicial and religious office holders; doctors; firefighters; and construction workers.

One issue that the government may want to address in an emergency situation is providing job-protected leave for workers. Currently, the ESA provides that employees whose employer regularly has 50 or more workers are entitled to 10 days of unpaid job-protected leave per year. This leave can be taken for personal illness, injury or medical emergency, or death, illness, injury, medical emergency or other urgent matter related to certain relatives.

In public emergency situations, employees may be unable to go to work because of circumstances arising from the emergency, such as if the public transit system were shut down, or they may in fact be instructed by government authorities to remain at home. Unless they meet the relevant criteria for emergency leave under the act or they have a relevant provision in their employment contract or collective agreement, they would not have job protection.

The Acting Chair: I think this is very important. Could you please explain that in a bit greater detail?

Ms Crouse: Sure.

1130

Mr Zimmer: What slide are you on?

Ms Crouse: I think I'll go back to slide 11.

Right now, the act has a section called "Emergency leave." That provides for 10 days of unpaid leave each year for employees, and they can only take it in certain situations. The first and probably biggest limitation is that it only applies in workplaces where they have 50 or

more employees. That means it doesn't apply to many workers. Also, it can only be taken in certain situations. So for personal illness or for the illness of an urgent matter affecting certain relatives, employees can take the leave to care for those relatives, for example. That is the only provision in the act that provides for job-protected leave for people who may need to leave work because of emergencies.

My point is that in some public emergencies that section would not apply to many employees who may not be able to get to work. So it's an issue that the committee may wish to consider in looking at the powers under emergency management legislation. It was an issue when we had the SARS outbreak last year, and the government at the time did decide to include it in a piece of legislation, because the concern was that people who were ordered to be under quarantine or asked to self-quarantine would break that out of concern that they would lose their jobs. Is that sufficient?

The Acting Chair: Yes.

Ms Crouse: OK. I'm on slide 13 now.

As I said, the Employment Standards Act establishes limits on hours of work, and these could potentially pose some issues in times of emergency. The act permits a maximum of eight hours in a day, or longer if the employer has a different regular workday; for example, a 12-hour shift. It also has a maximum of 48 hours in a week, and in order to exceed that the employer has to have written agreement from the employee. I should add, too, that recently the government introduced Bill 63, which, if passed, would add the requirement that employers obtain approval from the Ministry of Labour for excess weekly hours.

There is also the issue of overtime pay. Most employees are entitled to time and a half after 44 hours in a week, and this could become expensive for employers if they needed people to work long hours during an emergency.

The act also mandates daily and weekly rest periods, which you can see on the top of slide 14. However, I want to point out that there is a limited emergency exception that would cover some situations. It provides that employers may require employees to work longer hours or work during rest periods to deal with an emergency, but it's limited in that it only applies insofar as it is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations.

On slide 15, just a brief word about time limits. Like other statutes, the ESA requires people to do certain things within specified time periods. A classic example is to file a claim for unpaid wages within six months. The committee may wish to consider how time limits and expiry periods would be affected in emergencies. That's not just an ESA issue; I expect there are those issues in many statutes across government.

On to the Labour Relations Act: The Labour Relations Act creates a framework for collective bargaining and dispute resolution in unionized workplaces. It requires

unions and employees to reach collective agreements that cover terms and conditions of employment. The agreements may have terms such as hours of work or things like no-contracting-out provisions. These terms and conditions could become an issue in an emergency if the parties could not agree to vary them temporarily. However, the key provision in the legislation, I think, that may raise issues in an emergency is the right to strike or lock out. The act provides that strikes and lockouts are legal at certain points in the bargaining process. However, you should know that not all unionized employees have the right to strike, and particularly if they are providing an important public service. For example, you'll see, starting on page 18, that the Ambulance Services Collective Bargaining Act and the Crown Employees Collective Bargaining Act provide that certain employees, such as ambulance workers and designated OPS employees, must continue to perform essential services in the event of a work stoppage; that would be a strike or lockout. Also, the Hospital Labour Disputes Arbitration Act prohibits strikes and lockouts in the hospital sector, and the Fire Protection and Prevention Act prohibits salaried firefighters from the right to strike.

Finally, for my section, I just wanted to point out that numerous labour and employment issues would arise if the government decided it needed the power to order workers to be redeployed, to be transferred from one employer to another. Some examples of issues that could arise in that situation are what terms and conditions of employment would apply; there could be conflicts between collective agreements; you may wish to consider job protection for employees who are redeployed; and the issue of whether the original employer might be owed compensation.

That's it for my part. I'll hand it back to John.

Mr Vander Doelen: In addition to describing the statutes and how they might be impacted, we wanted to give you a bit of an overview of some of our operational response during an emergency, and the next couple of slides describe that.

You heard of Emergency Measures Ontario from Dr Young. The Ministry of Labour participates in that by having people at the command centre, as well as providing technical experts, depending upon the specific emergency, whether it's medical expertise, hygiene, engineering etc. We provide that expertise to Emergency Measures Ontario.

In addition, to support those functions we have developed an operational response related to field activity, which is described on pages 22 and 23. You can see that depending upon the nature of the emergency and the response required, we have mechanisms for activating our own command centre and action group with the ability to staff it from a technical standpoint with experts, as well as linking it to our field activity. As well, the command centre includes communications and human resources expertise to assist us in the kinds of decisions needed to allocate our resources and redeploy people, as well as getting information out to the public and

workplaces that might need specific contact around some of the statutes and the kinds of the things we described earlier.

So you can see that fairly quickly this sort of centralized organization is intended to be in place, with the ability to then provide specific support at individual workplaces, if required, whether that's an inspector or other expertise, and, as well, as you can see at the bottom of page 23, the ability to start to develop material to be available for the public. One of the avenues for that is a Web site where we would have an emergency icon where we would be able to provide information on whether it's of a health and safety nature and what precautions they should be taking in terms of specific workplaces, or other appropriate materials.

In addition, there were questions earlier about linkages and relationships with other organizations that might have similar mandates. We have a close working relationship with Health Canada, the US Centres for Disease Control, and the federal department of labour, which in some instances would be responsible for worker health and safety where there are joint jurisdictional issues of a provincial-federal nature.

In summary, what we've tried to relate to you is that while we've identified in statutes a number of issues that we see impacted, the work on what would be the specific resolutions to those is, I think, by its nature, dependent upon a general emergency response approach from other ministries and other organizations.

The Acting Chair: Questions?

Mr Zimmer: I have one question. In an emergency, when you find you have to adjust the working conditions—

The Acting Chair: The microphone again.

Mr Zimmer: In an emergency, when you find you have to adjust the working conditions, particularly those conditions pursuant to a collective agreement, are you finding that generally you're having the full co-operation of the unions and the employees in the collective bargaining unit, or does that present negotiation problems that, in effect, hold up the immediacy of your response?

Ms Crouse: I'll speak to that. I'm not aware of any significant issues in recent emergencies, but I think that's largely because they've been dealt with by public servants. The public service has an essential services agreement in effect. It also has an agreement as to what staff can be used in the event of an emergency.

Were the emergency to be one that the government would want to ask for help from private sector workers, I think there may be larger issues there, particularly if it was necessary to redeploy workers so there would be a new employer. So I'm not sure to what extent there would be issues, but I would just say there's the potential.

1140

Mr Zimmer: A follow-up question: What would be your view or your thoughts on managing that issue particularly with the private sector unions if you had to engage them in a crisis?

Ms Crouse: I think in most situations you would be successful in terms of the power of persuasion, and in many cases I think issues could be solved on a voluntary basis. But there is no way to say that that would be successful in every situation, particularly if a union felt that people were being asked to do work they weren't suited for or potentially trained for or something like that.

Mr Zimmer: Just one comment, then: Really, what it boils down to with public sector and private sector unions is a balance between leadership, that is, getting the folks to do something extraordinary, and coercion or technical enforcement that, "You will do this, you will do that."

Ms Crouse: Yes, I think that's a fair assessment.

Mr Zimmer: What additional legislative tools would you think might help you to achieve that right balance of leadership and enforcement?

Ms Crouse: As I believe is set out in the summary here, we think perhaps there should at least be consideration of having the power to override collective agreements in emergency management legislation. I certainly think the government may wish to try persuasion as a first tactic.

Ms Broten: The list of summary of issues is certainly helpful. I'm wondering whether in debriefs after a number of emergencies we've had in this province over the last number of years you can think of any specific examples where we had problems that would have been resolved by these proposed suggestions? Or, in the alternative, are they issues that have arisen as you look at what more we could have and these are on the list? I'm trying to determine whether, practically, we've had failures in the province that would be solved by these amendments.

Mr Vander Doelen: I'll maybe start with that. Many of these are identified as potentials, and as Marcelle identified, many of these weren't issues in previous emergencies. The one in particular that we have some experience with is the need to consider job protective leave provisions that go beyond the narrow ones that are in place. Again, as I think we heard from Dr Young, to get people to comply with some of the public order requirements of quarantine and that, you need to have the means to get people to buy into that. If they're worried about their income or their job, they are not going to comply.

Most of the others are really potentials. What we've seen in other previous experiences is the need for us to support and assist workplaces with information of a technical nature and communications so that, as the act currently has and we would anticipate in future, the workplace would have primary responsibility for delivery of health and safety responsibilities to workers, but the ministry could certainly support that through a quick response in terms of communication.

Ms Broten: It is my recollection that during the SARS crisis in the province we did have individuals who raised that as a specific concern: "If I stay home and abide by this self-regulated quarantine, I may lose my job."

Ms Crouse: Yes, that's right. In fact, the government at the time decided—and my branch worked on legislation that provided that job protection for people. So I think in that instance, we can certainly see that it was a power that was lacking at that time.

Mrs Sandals: Just to make sure I'm understanding here, it occurs to me, for example, that gas company employees in an emergency—or in an infectious disease emergency a lot of work is done in private labs or medical labs, so there are a lot of people out there who almost become an extension of what you need to manage the crisis. In order to ensure that we can require those workers to work above and beyond the normal circumstances, you're suggesting that we need to—would that be around the redeployment of workers, and overriding collective agreements would be particularly what we would need to look at there?

Ms Crouse: If it's a unionized workplace, yes. If it's a non-unionized workplace, you don't have those issues so much but you may have other legal issues in terms of compensation to the original employer, maybe for contracts that would be breached and so on. I wouldn't be the real person to speak to that.

Mrs Sandals: I suppose if it's a non-unionized group, then you're looking at the power to suspend all or parts of the ESA, because that is what would control in that instance.

Ms Crouse: Yes, because if there were concerns that they need to work extremely long hours or they couldn't possibly afford to pay the overtime that would be required under the act, then those are things that might be a problem. The problem is that the ministry wouldn't have any discretion if a claim were filed later. We would have to find that the employer had violated the act.

Mrs Sandals: So in fact this would give some flexibility around managing a situation. Clearly Ontario Hydro, in ice storms and just your average thunderstorms in northern Ontario, somehow or other managed to get everybody out there working around the clock, but there are other extensions of that where I'm not sure that's the culture.

Ms Crouse: As I said, there are crown employees and basically public emergency workers. The restrictions on hours and so on do not apply to them. So it's not an issue there; it's more in the private sector.

Mr Hudak: Thanks for the presentation. Does that type of language ever exist in a collective agreement that would allow the suspension of the contract for emergency situations?

Ms Crouse: I'm not aware of it specifically. I think it would be pretty rare.

Mr Hudak: I apologize that I missed this. In cross-jurisdictional references in other provinces, other states, do these types of emergency powers typically exist, or how are they handled?

Ms Crouse: I'm not sure. I haven't done that research recently. I looked at the presentation from Dr Young and I think you'll see some of the issues I'm talking about there. He indicates which jurisdictions have those powers

and which do not, but I couldn't speak to that with great accuracy.

Mr Hudak: The powers are general in Dr Young's summary piece. His presentation and others haven't really spoken about the labour market context, like suspending collective agreements, limitations on time frames, strikes and lockouts etc. I apologize if I did miss that, but I don't remember those coming up in the conversations. But you yourself don't know if they're typical powers?

Ms Crouse: I'm not sure. I haven't had a chance to do that.

Mr Hudak: Are you aware of any particular examples, either in Ontario or other similar jurisdictions, where these powers have been used or could have been used to prevent a slow reaction to a crisis situation?

Ms Crouse: Sorry, do you mean the powers in collective agreements?

Mr Hudak: Any of the six or seven things you listed as things you've asked the committee to consider that relate to the labour environment. The question was asked of other ministries, "Are there particular situations in previous crises or emergencies where these powers would have come in handy to resolve a situation much more expeditiously?" Can you think of examples here in Ontario and other jurisdictions?

Ms Crouse: Yes. I would say two examples would jump out at me from the list. As I've already said, in the SARS crisis, the job-protected leave was an issue we had to deal with and did not have the power to do at that time.

The second, and it may seem kind of minor, is the time limitations issue. It became an issue for our ministry because, as a previous speaker noted, non-critical staff were asked to stay home. Our intake offices and people like that were not working, so we had a number of people very concerned about time limitation situations, which I expect would be the case across the government.

The ones that we could deal with administratively, we did, but there are some in which neither bureaucrats nor

tribunals like the Ontario Labour Relations Board have discretion in the legislation to extend them. That may be something the committee may wish to consider addressing.

Mr Hudak: Great. Thank you.

The Acting Chair: Thank you very much for the presentation.

Just for the members of the committee, there are a couple of items I'd like to bring forward for information.

First of all, Dr Young talked about situational reports being available from his office. I would like to ask the clerk to ask Dr Young for situational reports on the Friday, July 31, closure of the 401. I'd like to have a report on that, and also a situational report on the gas rupture in the middle of the city of Toronto where 5,000 homes are without gas right now. That's in the Oriole Parkway-Eglinton area. I'd like to have a situational report on that. It's still going on at the present time. It hasn't received much press coverage. There is a command office there and I visited there yesterday with Enbridge and various city works. It's quite an amazing operation going on underneath the radar.

As the third item, I would like a report—I think it's under the Speaker's office—on how we might be able to employ the parliamentary channel for communications and information during a provincial emergency. In other words, we've got this channel sitting here. Why not use it to convey information to the public when an emergency arises? If we could have a report from the appropriate office, whether the Speaker or whoever has authority over that.

Those are the three things that I think it would be helpful to the committee to get for information.

We are now adjourned until Monday the 16th. The agenda will be forwarded. Thank you very much. The committee stands adjourned.

The committee adjourned at 1152.

CONTENTS

Thursday 5 August 2004

Emergency Management Statutes Review	JP-61
Ministry of Natural Resources	JP-61
Mr Jack McFadden, director, aviation and forest fire management branch	
Management Board Secretariat	JP-69
Mr Malcolm Smeaton, director, emergency management and security branch	
Ms Patricia Powell, program coordinator, emergency management and security branch	
Ministry of Labour	JP-72
Mr John Vander Doelen, director, workplace insurance, health and safety policy branch	
Ms Marcelle Crouse, senior manager, employment and labour policy branch	

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First Session, 38th Parliament

**Assemblée législative
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Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 16 August 2004

**Journal
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**Standing committee on
justice policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Monday 16 August 2004

Lundi 16 août 2004

*The committee met at 1305 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): I'd like to bring the standing committee on justice policy to order. The mandate of this committee is to review and report on the adequacy of Ontario's emergency management statutes.

I would like to, first of all, on behalf of the committee, thank all the invited guests for coming here today and bearing with us in this new format. We are trying to exchange ideas and in essence get more of a dialogue going with front-line experts like yourselves so that we're better able to understand the dynamics of emergency management from your professional area.

Today we are going to start with a 10-minute presentation—it can be less—from each of the organizations' spokespersons. After that 10 minutes, we will have 10 minutes per caucus for comments or questions. Then after that 10 minutes per caucus we are going to leave it open for as many questions as you want. Either the guest expert panellists can ask questions or make comments or the members of the committee can ask questions or make comments. Again, we're trying to make this work as best we can, and hopefully you'll participate. If we have to make some changes or alterations to this, we can do that.

One thing that we have to do, though, is that if you wish to ask a question in the question phase or make a comment, please raise your hand and indicate to myself or the clerk that you do, and then I will recognize you so that your name will be recorded along with your comments, because this will all be recorded as part of our legislative diary that is Hansard. So again, if you leave room for some flexibility, we're going to try to, the best we can, get your expert advice and experience for this committee. We thank you for making yourselves available in the middle of the summer for the committee's work.

I will start according to what I have on my agenda here. So we'll start with the Ontario Provincial Police; Maurice Pilon, Deputy Commissioner. Again, 10 minutes for a presentation or comments.

ONTARIO PROVINCIAL POLICE

Mr Maurice Pilon: Thank you, Mr Chair. I think before I start I should just provide some context as to

what the OPP is today, because many people think of the provincial police as just that—the provincial police. We've found, particularly over the last number of years, with changes in the Police Services Act, that we have become very much a municipal police service throughout the province, and then in addition, obviously, the provincial police.

We currently have approximately 8,000 employees; 5,400 to 5,500 of those are uniformed members. We also have approximately 800 auxiliary members available to us, particularly in times of emergency. In terms of providing context, I'll be providing my comments from the perspective of not only a municipal police service but a provincial police service.

1310

I want to begin by recognizing the advances that have been made and are being made in the area of emergency management as a result of the implementation of the Emergency Management Act. As both a police service and part of the provincial government, the three levels of readiness that we're working toward benefit us both as a service delivery provider as well as by ensuring the continuity of our operations.

I have reviewed the deputations from Dr Young, our ministry's legal services, and representatives from other ministries. As you pointed out, it's clear that the focus of your discussions is the need to institute extraordinary powers during an emergency, given what currently exists in the legislation, case law and common law. So I thought I'd focus my comments in that area.

From our experience, the OPP has lived through the 1998 ice storm, which has been mentioned previously, where forcible evacuation was indeed an issue. We have had several instances of public order maintenance in the context of multi-jurisdictional situations like the 2000 Windsor OAS, the extensive border delays that presented themselves as a result of the 2001 9/11 attacks in the United States that in fact caused us to close major thoroughfares, and the 2003 SARS event, where enforcing quarantines became a police matter.

It's in the context of those four events—however, I can certainly relate to others as we go along—that I'd like to provide you with an opinion as to whether the police have the necessary authority to effect their functions during a variety of emergency situations.

In terms of the forcible evacuation issue, as was pointed out by Dr Young in his deputation, the 1998 ice

storm presented us with some very unique challenges. OPP officers in the eastern region and from across the province who were there working faced instances where they were required to forcibly remove residents from their homes in order to ensure the safety and well-being of the occupants. There was much discussion at both our OPP emergency operations centre and the provincial operations centre as to whether legislation allowed for this. It was determined that in fact there was no specific legislated authority.

However, post-event, my staff examined evacuation legislation in other provincial jurisdictions—that is, Nova Scotia and the Yukon, where it does exist—with an eye to possibly creating similar authorities in Ontario. At the time, our legal services examined the issue and came to the conclusion that there were sufficient powers found in subsection 42(3) of the Police Services Act and in fact in common law, supported through case law decisions through both the Ontario Court of Appeal and the Supreme Court of Canada.

The thing we have come to understand is that a police officer who is faced with an emergency is always bound by the Police Services Act, which gives police officers the powers and duties ascribed to a constable in common law. The Supreme Court of Canada has held that one of the principal duties of police officers in common law is to protect both life and property. A recent decision of the Ontario Court of Appeal noted that this duty obviously includes preventing death and serious injury.

The Supreme Court of Canada went on to say that while residents have a recognized privacy interest within the sanctity of their home, the public interest in maintaining an effective emergency response system is obvious and significant enough to merit some intrusion on a resident's privacy interests. However, the intrusion must be limited to the protection of life and safety. It's clear from these findings that the police currently have the authority to forcibly evacuate where the life and safety of the person is in jeopardy and that there are sufficient judicial safeguards in place to ensure that they do not abuse this power.

Therefore, on the issue of evacuation during emergencies, it's my opinion that we need not create additional powers since they exist and can be locally exercised, thereby respecting the notion of the lowest competent level of response. Having said that, in practical terms, in the absence of legislation that specifically authorizes evacuation, and forcible evacuation if necessary, it sometimes becomes a very difficult issue in dealing with the residents who choose for their own personal reasons not to leave a facility or a residence. You'll find that the elderly in particular do not wish to leave. They become confused and so on.

So I would say that while we have the authority, it could be very much tested in law. It would be much easier if the law did specify that that authority existed.

In regard to enforcement of quarantine orders, again going back to the 2003 SARS outbreak, police did play a role in the enforcement of quarantine orders. While

obviously the primary response was dealt with by the medical officer of health, police were called upon to assist in some circumstances.

I think you've already heard about the legislation that's in place and the authority of the medical officer of health and so on, but basically when a person fails to comply with an order, a judge may order that a person be taken into custody and admitted to and detained in a hospital named in the order. It also may order that a person be examined by a physician to ascertain whether or not that person is infected with an agent of a disease, and, if found on examination to be infected with an agent of a disease, that they be treated for the disease. A judge's order may be directed to police to assist in enforcing the order.

The act itself provides some authority to police, acting under the direction of the medical officer of health, to enter any premises to conduct investigations and make inquiries for the purpose of the act. However, the act does not provide specific authority for police entry to a private residence without the occupier's consent.

In exceptional circumstances where the apprehension of a person in a private dwelling is required in furtherance of the act to protect persons and the public from the spread of a disease, obviously there are provisions for what is known as a Feeney warrant, or an endorsement to a judge's order would be advantageous. But that issue again would take some time and, depending on the urgency of the matter, could prove to be difficult.

Presently the police would be required to rely on the same powers under common law and the Police Services Act that allow for forced evacuations. I guess the only significant difference would be that the police are actually taking a person into custody in that case rather than just moving them away from an emergency situation.

There is no provision during health emergencies for the release of personal medical information by medical facilities to police. That's an issue where we think it would be beneficial if there was some way to inform the police or indeed any emergency service worker of the potential risk they face in dealing with people or places, depending on the circumstances.

I guess the bottom line, in relation to SARS, is that it forced police services to look beyond their usual statutes and consider what their role would be in the case of a health emergency. Understanding our role in executing a judge's order did take some time. However, with the combined efforts of numerous police services, the police position that was advanced in respect of medical officers of health was both consistent and defensible.

Another area I'd like to touch on is traffic enforcement, stops and checkpoints. I know there have been discussions here about emergency plans related to provincial nuclear emergency response and a foreign animal disease plan that indicate the police may be required to establish road closures, checkpoints and traffic stops. These measures are all taken in furtherance of public safety by limiting access to contaminated areas and enforcing prohibited movement of infected animals, respectively.

To make a long story short, the Highway Traffic Act does provide sufficient authority for the police to control traffic. It's my opinion that the Highway Traffic Act, combined with the previously mentioned sections of the Police Services Act, provides for adequate police powers to restrict movement on Ontario highways, as well as interception of the transportation of infected animals.

I'll just touch on public order maintenance and crowd control. The current order-in-council responsibilities for major events fall within the Ministry of Community Safety and Correctional Services. Intergovernmental conferences such as the 2001 OAS Summit of the Americas pose unique challenges for law enforcement. A delicate balance must be struck between the right to express dissent and the need to protect life and property. Command responsibility for major events falls to the policing service of the jurisdiction. Command decisions in these events are made based in large part on local knowledge, local standing operating procedures and intelligence information. Consequently, site command of these events, as in any emergency, should be free from bureaucratic interference.

1320

Given the dynamics of major events, police authorities rely on a variety of legislation to ensure public safety and maintain public order. Just as an example, some of these statutes are the Criminal Code of Canada, the Trespass to Property Act, the Highway Traffic Act, the Public Works Protection Act, the Police Services Act and, obviously, the Charter of Rights and Freedoms. But the combined application of these statutes provides an adequate legislative foundation to ensure public safety and maintain public order during major events and, in my opinion, no further powers are required for these specific types of events.

I've just shared with you some experiences from four types of emergencies or major events and hope I've been able to give you a sense of what the police do. But the extraordinary powers the police have on a daily basis are just that: extraordinary powers. As such, we feel there is an enhanced duty to focus on public safety, which is our primary responsibility, and that there are safeguards in place to respect citizens' charter rights. To the police, the fact that these powers exist in a variety of statutes, case law and common law is a common thing.

I mentioned a couple of things in terms of potential for improvement. Obviously, if you have specific legislation that authorizes specific activity, that's preferable to relying on the courts to interpret whether or not you had the authority to do what you did in an emergency situation. For example, access to medical records for the purposes of public safety would certainly be a good thing from the emergency services provider side.

I should also point out that you're going to hear from others here in the emergency services area, our colleagues from the RCMP and the Ontario Association of Chiefs of Police. The reality is that we find ourselves working hand in hand, right across this province, on a daily basis. But specifically in times of emergency, those

relationships are called upon to ensure that we have a seamless approach to public safety. Whether it's a federally led initiative, in which case the RCMP might perhaps have the lead, or a provincial initiative, where the OPP demonstrates leadership, or a municipal initiative, where the municipality has the lead and others are there to provide support, our main focus is public safety. As I pointed out, I believe we do have sufficient authority at this time to deal with the things we have to deal with.

The Acting Chair: Thank you very much, Deputy Commissioner.

OFFICE OF THE FIRE MARSHAL ONTARIO

The Acting Chair: Next, representing the Ontario fire marshal's office, are Doug Crawford, deputy fire marshal, and Barry McKinnon, chief of emergency management and response.

Mr Doug Crawford: Thank you, Mr Chair. I did have a presentation with some slides that I could share with the members.

The Acting Chair: Yes, and if at a later date the presenters want to present us with anything in writing or additional information, please do so in your own time.

Mr Crawford: Good afternoon, ladies and gentlemen. On behalf of the fire marshal's office, we appreciate the opportunity to participate on the essential services panel this afternoon.

A bit of context on the fire marshal's office: We are an office within the Ministry of Community Safety and Correctional Services. We provide advice, assistance and support to the Ontario fire service, among other things within our legislation.

My intent in this opening statement is to briefly touch on a number of areas that we believe may be of some interest to the committee, and we can follow up later, if that's so.

First, we in Ontario are very fortunate to have an excellent police, emergency medical service and fire service that work extremely well on a day-to-day basis. The Ontario fire service is composed of approximately 500 fire departments. Of these, 28 are comprised of full-time firefighters; 152 are what we call composite in nature, meaning they have both full-time and volunteers; and there are 323 departments that are exclusively staffed by volunteer firefighters.

From these figures, you can see it's an interesting mix, and you can conclude that the fire service capabilities are often quite varied throughout Ontario. It's clear that they will offer a variety of services based on the needs and circumstances of their local community. This is the only emergency service that relies heavily on the volunteer component.

We find that most of our legislated role is contained in the Fire Protection and Prevention Act, which was passed in 1997. The act sets out the roles of municipalities in the province in providing fire protection services. The FPPA sets out many of the powers and responsibilities of the fire marshal, assistants to the fire marshal and fire chiefs.

The FPPA identifies a number of actions that these parties can take in fulfilling their role to deal with emergencies, investigate fires, or take preventive action to reduce the threat of fire. Depending on the risk to life, powers may include the use of force without a warrant to gain entry. These powers are balanced by providing specific remedies within the legislation as to what the fire service can actually do to address those situations. Last, I would just like to reinforce that the powers in the FPPA, as you would expect, generally relate to the risk of fire, and that's where they flow from.

The delivery of fire protection, as I've said, is a local responsibility, and today we have those 503 fire departments in the province providing that day-to-day service. Since the 1950s, this province has had a system of mutual aid to share local resources in times of significant emergencies. Today we have 46 mutual aid systems. They are typically set up within counties, districts and regions, and the fire marshal appoints a fire coordinator for each of those systems. Municipalities have continually demonstrated their willingness to share resources with other communities. They have also deployed their resources throughout the province in times of extreme emergency. The resources available within the system are regularly updated so that the information is available to us at the time of an emergency.

After September 11, the province responded to enhance the existing response system and determined that a program should be implemented to enhance chemical, biological, radiological, nuclear, and heavy urban search-and-rescue response capability in the province. It was determined that the most effective and efficient approach would be by entering into partnerships with municipalities. This system allows fire coordinators of the mutual aid systems to request specialized assistance through the provincial operations centre to assist in the resolution of significant emergencies in a municipality or area that has formally declared a local emergency or anticipates declaring one.

In the slide of the province, we have a number of circles designating level 1, level 2 and level 3 teams. These slides identify the levels 2 and 3 teams that are in place under agreement with the province. The teams were selected to be protected based on risk, geographic location, existing capabilities, and the ability to enter into an MOU with the province. All municipalities are expected to have that level 1 awareness. Toronto continues to develop its HUSAR team, and the province has an MOU with Toronto to access that resource.

The OFM, with our partners, has developed fire department training, including awareness, operations and technician level for hazmat and CBRN. We've also developed a multi-agency senior officer program targeted to senior officials in the emergency responder community. Our goal in providing that multi-agency training is to ensure that the three primary first responders have the opportunity to train and develop together and that all that training links back to hospitals/communities. To be effective, we need to work together on developing co-

ordinated standard operating procedures, incident management systems, and communications. It's recognized that these are critical factors in large-scale emergencies and that this would enhance day-to-day operations.

1330

I'd like to conclude by saying that the significant emergencies that we've faced have been very complex, and it's impossible to think in advance of all of the details we may have to face. Our legislation, as I said, focuses generally on fire, and we have a pretty good track record dealing with fires over the years and have identified some of the appropriate solutions. The legislation does that, but an ability to redeploy needed resources and to communicate effectively are cornerstones of providing an effective, coordinated and safe response.

In a fire emergency, the local municipality is typically the level of government that has most of the resources to remedy the situation. The provincial role is very much to support those local resources. In the future, we need to ensure that efforts to remedy situations that are difficult for us to consider today are not impeded by a lack of authority to take the necessary steps.

In the event of a large complex emergency involving multi-agencies and where public safety is involved, we need to ensure that someone has the authority to make the necessary decisions so that we can get the job done.

The Acting Chair: Thank you very much for being shorter than the time allotted.

The next presenter—

Mr Peter Kormos (Niagara Centre): Chair, that having been the case, I'm just interested in the very—in his closing statement, he talked about the need for the [inaudible] authority to make the necessary decisions. I appreciate that's what he's saying, but I wonder if [inaudible] now, rather than waiting till the end to talk about—like what, for example?

Mr Crawford: One of the examples that comes to mind is during the SARS emergency. The fire service was very much involved with the other first responders. One of the issues that came back to us was developing a protocol for what we call tiered response—in other words, when different emergency services agencies would go in. That was necessary, because in York region, for example, a number of the emergency services individuals had been exposed at an early stage and then were quarantined.

We were quite concerned that if we continued on that path, we would end up with many other first responders being taken out of service for a period of time. It was very necessary that we develop the protocol that all of the three first responder agencies would accept and work with. That would be one of those examples of something that cuts across the lines.

Mr Kormos: Sure, and having said that, you're not talking about a need for some sort of legislative reform. What has happened by way of developing that protocol?

Mr Crawford: I wasn't focused there on legislative reform.

Mr Kormos: I'm not quarrelling with you; I'm saying, here you are giving an illustration of something that

didn't need legislative amendment. So what has happened since last year around developing the protocol that you say was sorely missing?

Mr Crawford: One example that we dealt with at the time was drivers' licences. At the time, there was legislation that did not allow the fire services, as an example, to drive an ambulance if it was necessary. That was quickly put through the system during the emergency.

Since that time, Dr Young has been appointed as the commissioner of emergency management, and it's our understanding that his role is to pull together those different agencies and different priorities, so that in a time of emergency, we can move those things through the system more quickly.

Mr Kormos: Having said that, what has happened? What has been done?

Mr Crawford: As I spoke about in my presentation, we worked very closely with the other response agencies. We provided training at the fire college to all of those first responders so that we can identify what's needed to work together, so we can be working together upfront. Therefore, when we're in an emergency situation, we've gone through the thinking ahead of time as to how we'll work together, how we'll operate together on those large things. We've put a lot of effort and a lot of time into training, into working with each other on how to deal in these emergencies.

The Acting Chair: We'll give you more time to ask more questions as we go around the next round. We'll come back to those.

1340

ROYAL CANADIAN MOUNTED POLICE

The Acting Chair: The next presentation is from the Royal Canadian Mounted Police: Inspector Marty Van Doren, assistant criminal operations officer and Ontario RCMP critical incident coordinator.

Mr Marty Van Doren: My comments here will be somewhat unique because the RCMP in Ontario is a support role in many cases, with the exception of under the national counter-terrorism plan. Deputy Commissioner Pilon spoke about the laws, and they were well articulated. There is no point in duplicating that effort.

This panel participation is timely on my part because the RCMP is mandated to conceive, develop, implement and sustain a standardized, all-hazards RCMP emergency management system from the federal component to across the country.

EMS is focused on the RCMP's role, readiness and response capabilities and capacities for emergencies and disaster events. Effectiveness of response is directly related to the preparedness effort and precedes any event. Successful resolution of an event is dependent on the ability of responding agencies—and I emphasize—to communicate and coordinate their efforts despite the stress imposed upon them by the emergency or the disaster or the lack of clarity regarding the situation that confronts them.

Emergency management statutes, be they provincial or federal, provide the mandate and direction to the various emergency services groups and outline their expected responses. It is therefore essential that the various emergency management statutes be complementary and standardized in their approach. It is also compelling that the stakeholders, the emergency service providers, be active participants in the creation and modification of that legislation. It speaks to why we're here today. There is no point to enacting legislation that does not speak to the anticipated needs, or sets standards that are not attainable or adequate.

This division, as all other RCMP divisions, is actively engaged in the standardizing of our emergency operational plans under the direction of our RCMP headquarters. The strategic goal is to enhance, facilitate, enable and support RCMP operational capabilities and mission accomplishment by instituting a force-wide coordinated, integrated and partnership-focused all-hazard EMS. The key is comprehensive planning coordination with multiple agencies and jurisdictions, which will result in more and different organizational relationships and performance standards.

Although the RCMP is not the police force of jurisdiction in Ontario, we still have obligations for EMS responses; some are legislated, some are on a request basis and some are morally induced. One example of a legislated response would be under subsection 6(2) of the Security Offences Act. Under 6(2) of the Security Offences Act, the RCMP is responsible for providing immediate operational police response to emergency situations that arise under the Security Offences Act, now the national counter-terrorism plan.

As indicated under 6(2) of the Security Offences Act, agreements are now in place with all the provinces, except for the province of Quebec. We also have agreements in place with the Ontario Provincial Police and all the municipal police forces in the province of Ontario. Other examples of RCMP involvement would be during the power outage of August 2003. We were actively involved in that situation. Currently, we are providing backup for the OPP while their third TRU team is being re-established.

The RCMP is an active participant in the exercises with the various EMS providers.

The post-9/11 world environment with the new world order dictates a coordinated response consistent with the expectations of the Canadian populace and the international community. Subsequent to 9/11, the RCMP has put considerable effort into developing a response capacity in relation to the national counter-terrorism plan. In that regard we have created what's called a special operations communication centre in Toronto. The acronym is SOCC. In this special operations communication centre, the RCMP, the Ontario Provincial Police and all major GTA police forces are housed. The Department of National Defence, CSIS, CBSA—the Canadian Border Security Agency—are all involved in this. They all have their data banks available and they're all fully operative

within the special operations centre. All checks can be conducted in a one-stop recommendation.

Also co-housed within this structure is the provincial anti-terrorism unit and the integrated national security enforcement team which the RCMP is composed of.

The Acting Chair: Thank you. I'm not sure what to call you—Inspector? What would be the proper—

Mr Van Doren: "Inspector" is fine.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Acting Chair: The next presentation is from the Ontario Association of Chiefs of Police: Greg Stasyna, head of the Toronto police public safety unit. Go ahead.

Mr Greg Stasyna: Thank you, Mr Chair. Good afternoon. I'm Greg Stasyna of the Toronto Police Service. I've been asked to represent the interests of the OACP in your presentation, and we'd like to thank you for the opportunity to speak.

What I'd like to do is just give a quick background from a Torontocentric perspective with respect to policing. Some of the things I'm going to cover have been mentioned already by some of my other colleagues here. What we're looking at, from my perspective, and what I'm asked to represent, is a municipal policing perspective with respect to emergency management preparedness in Ontario.

There are many revised statutes of both Ontario and Canada that effectively give us a degree of authority in maintaining control and preserving the peace with respect to emergency, and a lot of these were tested last year—I'm not going to revisit them—such as the great power failure, SARS, and even the preparations for Hurricane Isabel; we developed a ramp-up process.

The previous year, I believe, from a policing perspective, not only woke up the people of Ontario to various types of emergencies and disasters that can appear and happen in this area, but also woke up a lot of the police agencies that everyday policing really has to expand far beyond what we normally practise. We have to be ready at all times, which we find we aren't always. I think that's perhaps a facet of Canadianism: We don't react until a major emergency is upon us and then it might be too late.

Post-9/11 has done a lot of things recently with municipal policing in emergency management. Speaking from the Toronto police perspective, and following a quick history of it: Until about the mid-1990s, the Toronto Police Service was exclusively responsible, in the Toronto area, for the development of emergency management and the plans and protocols that go with it. That switched in the late 1990s, when the purpose of that whole program was switched to works and emergency services under the commissioner at that time and to an office of emergency management. Toronto police, along with its other policing services and brother and sister first responders, still maintain a large input as the thin edge of the wedge within this, and we realize that.

Some of the concerns with respect to policing in emergency management focus around not so much legislation—the legislation is quite strong—but tweaking the preparedness and the fact of working together in a harmonious, joint emergency preparedness scenario. In Toronto we have something called enhanced emergency management. What that is basically focusing on is a more, shall we say, consolidated approach to emergency management with police, fire, EMS, public health, works and emergency services and all our primary partners focusing a synergistic effort with respect to responding to what we call level 2, level 3 emergencies, or the major disasters and events that may affect the city and area.

Some of the programs we've already looked at are things like CBRN, where we have a chemical, biological, radiological, nuclear team here that is a joint team; a heavy urban search-and-rescue; and pandemic and epidemic planning through our public health, which is probably the most, shall we say, intangible type of planning because you can't really see it, you can't shoot it, you can't handcuff it, you can't stop it, from a policing perspective. That's probably one of the greatest challenges: not only to protect our front-line policing responders, along with our brothers and sisters from fire and EMS, and of course the public at large, but to protect ourselves. We've certainly learned a lot of lessons from last year's SARS in not only protecting the public but in dealing with legislation, such as the Health Protection and Promotion Act, that we're not normally dealing with.

One of the themes we're leading toward in this, and suggesting that the committee look for, is more enhanced training and education at an emergency and disaster level. Toronto police ran such a level field exercise in April 30, in conjunction with its partners, called exercise collaboration. This was a joint team chemical-biological attack focused at Humber College. We picked Humber College because they offered up the geography, and as our community partners, we felt that would be a good link-up.

We looked at the dissemination of a sarin-type agent and its impact upon the emergency responders and the community at large. The exercise in general was a success, but it did test our mettle and it did prove that we only have a thin layer of veneer in sustainability in responding to such an event. Over 300 emergency response personnel, including Sunnybrook and Women's College Health Sciences Centre, along with Toronto police, fire and EMS, responded on this occasion to triage and treat and transport 26 affected victims, so it took quite a knock and beating out of our resources. To sustain something like that in a populated area such as Toronto would take a big effort not only in the policing but in the emergency services at large.

One of the frustrations I've been asked to bring up is a lack of federal support directly to us. I'm not saying that it's a lack of co-operation, because we receive excellent co-operation from our provincial and federal counterparts—from DND, RCMP, Emergency Management Ontario, OPP, and I can go on and on. We still have a

challenge of seeing any sort of sustainable funding being filtered down from the federal government to the provincial level to be used for enhanced emergency management in respect to disaster and emergency preparedness. Some of it is getting down but not to a sustainable level.

One of the challenges is keeping our memories clear as things fade. Without the media, probably our memories of the power failure and SARS fade off into the distance, and other natural disasters and events, and then sort of going down to history. We've got to keep that wave of planning, wave of preparedness, wave of financial support, wave of co-operation between police and other front-line responders going. We can't just step up at the last minute and pay our insurance premiums, just before an event or just after an event. As with the definite incidents that recently happened in Peterborough, it shows you that something could happen anywhere and any time, and the OACP definitely realizes that. So we've got to be as ready as possible and we've got to look to our more populated areas to provide support to the less populated areas, as with, say, the joint CBRN team in Toronto.

One of the other big things we've got to look at is information dissemination. We're in the era of memorandums of understanding—co-operative efforts between municipal, provincial and federal entities, not just with police but all entities. We've got to remember that information sharing is important, and timely information sharing during an emergency or disaster is even more important, so that we can hone our resources and respond appropriately. We're fortunate in Ontario that we have a good practice, but we've got to maintain it through joint information centres and co-operation.

One of the latter points that I wish to mention is that of maintaining the integrity of local authority. With these enhancements through provincial, federal and municipal resources in honing our responsibilities to an emergency, we've got to remember that the site is the site, and is controlled or should be controlled by local officials. In that case, we look at the site of Toronto being controlled co-operatively, depending on the nature of the emergency or disaster that affects us, by local and municipal first responders. We look for support and shoring up on sustainability of our resources, but we've got to be very careful in that we've got to maintain the integrity of site command and site control, particularly through newer entities like incident management systems, which are now developing on a provincial level, and we applaud that and see that, but we've got to maintain that it's there to support the site.

One of the things we'd like to recommend with respect to enhanced emergency management is to continue the streak that we've been going on: Don't let up on our preparedness, don't let it die on a back burner somewhere, because we never know when the next big one is going to happen to us—anywhere in Ontario, or Canada, for that matter. The integrity of our capability from the policing side of things to preserve peace, maintain the integrity of the laws and work with our emergency

responder partners is paramount. Increased clarification and the ability to police protectively and with indemnification is very important. One example has already been mentioned—I'll just reiterate right now—and that is with evacuations. In Toronto, the Toronto police have several different iterations of evacuation plans. As we know, it may be absolutely impossible to evacuate a city like Toronto safely.

1350

However, one of the things I've been asked to bring up to you is the discussion of a waiver for the non-provision of services in an area that's been evacuated and for people who refuse to leave. As we know, that is a hot legal topic: trying to force people out of their homes, which they own and may want to protect, in a state of emergency where an evacuation has been ordered. However, with that said, we have to make sure that if people want to stay, are insistent and refuse to leave, the appropriate protocols for use of force, or acknowledging that there is a waiver to the local police service and other services that covers them for non-provision of services once an area is evacuated, have been examined fully.

In conclusion, I think we're moving in the right direction with respect to emergency management. It has to be an enhanced mode, that we all work together. We can't work in our silos of information any more. I'm sure the OACP wants an enhanced thrust put into that so that we all work together for a better disposition and response from front-line and all other supporting elements in emergency management. Thank you very much.

The Acting Chair: Thank you, Mr Stasyana. We're just going to go around and I'll get back to you when we have questions.

The next presenter—yes, Mr Kormos?

Mr Kormos: If I may, as you know, I endorse this round table but it's not very round.

The Acting Chair: It's square.

Mr Kormos: It seems to me there are some things he mentioned—and I appreciated hearing them—that I'd like to comment on and query, with the anticipation and hope that subsequent people speaking may add to that. That's why I'm asking that it not be too—

The Acting Chair: That's why, when everyone has made their presentations, we'll allow for that very thing to happen.

Mr Kormos: OK. It is a square table, again.

The Acting Chair: Hopefully, as I said, we'll try and work it out and if we have to make adjustments, we will.

Mr Kormos: OK, gotcha.

The Acting Chair: I anticipate that we can respond to that, but let me know if it works.

Mr Kormos: That flow chart has no arrows.

ONTARIO VOLUNTEER EMERGENCY RESPONSE TEAM

The Acting Chair: The next presentation is from the Ontario Volunteer Emergency Response Team, OVERT. The presenter is Shane Harbinson, executive coordinator.

Mr Shane Harbinson: Let me begin by thanking the committee for the opportunity to be here. As the officer in charge of the Ontario Volunteer Emergency Response Team, I represent one of the most utilized community response groups in the history of Ontario. Our unique experience in having worked on the front lines with various government agencies in dozens of major incidents allows OVERT to approach today with a very unique perspective.

As a point of context, the OVERT program was developed as Ontario's first second-tier response agency and is based on several professional emergency response teams. The program was modelled following the principles and guidelines of local emergency services, including police, fire, EMS, public health, EMO, social services and the Canadian military.

OVERT is a new vision in volunteerism, more closely aligned with the commitment, dedication and professionalism of volunteer firefighters than with any other program in the province.

The OVERT program provides local authorities, CEMCs and directors of emergency measures a viable second-tier response to major incidents. This capability allows the deployment of professionally trained and experienced volunteers into critical supportive roles to help the overwhelmed emergency services during a major incident.

In the past 24 months, OVERT has seen a dramatic increase in the number and duration of major deployments: 18 deployments in six separate jurisdictions, responding to every imaginable incident from child abductions in Toronto to the blackout of 2003, SARS, and most recently the Peterborough floods. In total over this period of time, OVERT personnel have deployed for a total of 75 days, providing in excess of 15,000 hours of service.

Until just three weeks ago, OVERT provided services to over 3.5 million Ontario residents. Now, after successfully negotiating a response package with the Ministry of Health's EMAT—emergency medical assistance team—OVERT is providing services through EMAT as part of a province-wide response capability. The agency is also in the midst of negotiations with the Toronto Emergency Services HUSAR team for provincial response.

One of Ontario's greatest assets is in both our citizens' and the business communities' ability to innovate and develop new products and programs that strengthen and help the province as a whole. Unfortunately, with community-based response initiatives, too often we see bureaucratic interference that in no way helps or encourages the expansion of such programs, despite widespread support at the local level.

I'm here today to come forward with four recommendations, the first and strongest of which is the continued development and support of the provincial government for a limited province-wide, second-tier emergency response program.

The second recommendation is the adoption of a classification for community-based emergency response

teams or a similar model to identify, separate and classify the hundreds of emergency response teams that currently exist or are going to be created.

Third is that WSIB coverage be extended to all volunteers who are involved in front-line, second-tier community response.

Finally, we recommend the recognition by the province that our front-line emergency services require immediate assistance when they are overwhelmed at the beginning of a major incident. Through this recognition needs to come the provincial support for cost-effective programs that see a rapid, immediate response to help the overwhelmed front-line services and the communities they serve.

The Acting Chair: OK, Shane. Thank you.

TORONTO EMERGENCY MEDICAL SERVICES

The Acting Chair: The next presentation is from Peter Macintyre, manager, community safeguard services, Toronto Emergency Medical Services.

Mr Peter Macintyre: Thank you for this opportunity to present here on behalf of the paramedics of Toronto and the men and women who provide paramedic service across Ontario.

We've heard a lot of talk here about SARS and the blackout, and certainly SARS had a significant impact on the emergency medical service system around here. In a disaster, there are a number of issues we need to look at, one of which is the need to balance the recognition that this is not business as usual, that these are extreme circumstances and things may have to change, versus the legitimate requirement to protect workers, protect the public and protect our first responders. So what happens to things like collective agreements, the Workplace Safety and Insurance Board, the Employment Standards Act, the Occupational Health and Safety Act? Are they going to be abrogated completely during this, or are there going to be limits placed on them? If there are going to be limits, who decides what they are, who decides how long they last, and, if people don't like them, what is the mechanism to say, "I don't like this"? What is the appeals process?

Planning and emergency planning have to be integrated across geographic boundaries. Right now, the legislation requires that each municipality develop an emergency management plan, but there's no requirement in that legislation that says Toronto has to talk to Durham or York or any of our neighbours; we each can, theoretically, develop these plans in isolation, without any consultation with our neighbours. Clearly, if you do that, you're going to run into problems. We certainly ran into problems during SARS because many of our paramedics, as is common, don't live in Toronto; they live in Durham region. We had implemented working quarantines for our paramedics, with the full approval of Toronto public health. Durham public health worked under different rules, and they said to our paramedics who lived there,

"No, you're in quarantine; you can't go to work," which created significant problems, because if we don't have workers, we can't provide the service that we're going to be required to provide. So we need to mandate integration across geographic boundaries for local emergency planning.

Hospitals, specifically, must be mandated to integrate their emergency and disaster planning with the communities in which they operate. Ontario hospitals, by and large, are not involved in local community disaster planning, with some exceptions—things like the Pickering nuclear plant and the airport. So we need to make sure that hospitals, which are our primary medical response, are part of the planning process for emergency management and medical disasters.

Health care providers—and again, this goes back to the planning issue—by and large, not in Toronto but in most health care facilities and in most EMS systems, quite frankly, will rely very heavily on part-time workers. Each group develops their own emergency plan, and to upstaff in an emergency, we're all counting on bringing in our part-time staff. But if you are counted in Toronto and you live in Durham, you're probably counted there, because you work part-time there. Many, many nurses work part-time in four, five or six different facilities. Each of those facilities is probably counting on being able to call that particular nurse to come in to work in the event of a disaster. You can only cut the pie so small. A paramedic or a nurse can only be in one place at one time, so if we don't have integrated planning, we can't have that. We've got to have a system in place so that responders are really only counted once; they can't be counted three times, which gives you an artificially inflated view of what resources we have available.

1400

As was mentioned earlier, access to information, especially information about who's sick and who's been exposed—during SARS, we had significant issues where our paramedics wanted to know if a patient we picked up and transported to a hospital indeed had SARS. Current legislation does not allow us to get that in a timely fashion. Yes, down the road, public health will notify us. But as we found with SARS, they were overwhelmed to the point where they could not provide that timely information to us to provide appropriate counselling, remediation and exposure recommendations for our paramedics.

We would implement routine precautions—in other words, treat everybody as infectious—but it's very comforting and important for us to know, if a paramedic comes down with respiratory symptoms, whether or not the patient they took with respiratory symptoms yesterday indeed had this syndrome. If they've been exposed, we're going to deal with them one way; if they haven't been exposed, we're going to deal with them in entirely different ways.

Immunizations: Right now, for mass immunization programs, people have the right to say, for religious or political or whatever reasons, "I don't believe in im-

munization." If we get a smallpox outbreak in Toronto, we know it's not natural. We know it's a weaponized outbreak. Do people have the right at that point to say, "I'm opting out. I choose not to be immunized against smallpox"?

That situation exists with influenza programs throughout the health care system, where we want our paramedics, nurses, physicians, firefighters and police officers to be immunized, but there's no requirement that they be immunized, because as citizens they have the right to choose not to. But in a disaster, who's going to tell people, "I'm sorry. You do not have a right to refuse these kinds of immunizations"?

Finally, I guess, as was predicted by Commissioner Young in his first day of testimony, we need to be funded if we want to run an exercise. Tabletop and paper exercises work very well and help us smooth down the information flows and develop a broad picture for how we're going to respond. But the exercise Mr Stasyna talked about at Humber College was several months in the planning and cost a significant amount of money.

Our resources, certainly at EMS, are stretched so tightly now that there is no surge capacity in the system. If we were to have a chemical spill, a terrorist explosion or, I guess, just an ordinary, run-of-the-mill, common problem, we could respond, but we also can't forget there are 2.5 million people who live in this city. We have to maintain resources to serve them. We can't just focus all our resources on the immediate incident.

We need surge capacity in EMS, in fire, in police and in the health care system, because the system, as we all know, is stretched to the maximum. Without surge capacity, we may be able to manage the initial phase of something, but we can't maintain that capacity over the long term. When I'm talking about the long term, I'm not talking about three months; I'm talking about three days, two weeks. I'm talking about short-term maintenance.

Thank you for this opportunity.

The Acting Chair: Thank you very much, Mr Macintyre.

ESSENTIAL SERVICES PANEL

The Acting Chair: Now we'll go to the caucuses and do 10 minutes per caucus. Then we'll come back to the open questions and answers from everybody. We'll start with Ms Broten, and then Mr Dunlop and Mr Kormos.

Ms Laurel C. Broten (Etobicoke-Lakeshore): My first question is for the fire marshal's office. You made mention of the fact that the Fire Protection and Prevention Act provides some fairly detailed powers in terms of your ability to undertake actions in the course of a fire. I'm wondering whether you can comment on when the fire departments are called upon to respond to those emergencies that are not a fire. I would think we may see that more and more in years to come. From where do you take your powers to conduct search and seizure and other steps at that point, and is that an area where you see some need for legislative change or not?

Mr Crawford: Certainly our powers in the Fire Protection and Prevention Act—when we talk about fire protection services, those are defined quite broadly in the act. From an emergency management point of view, we feel pretty comfortable that those powers are the ones the fire service needs today and into the future.

When we're dealing with some of the preventive types of situations that we may want to be into, our preventive legislation is very, very much focused on fire. I spoke about some of the powers that were provided and some of the authority. They are pretty strong powers, but again they are focused on fire. They allow us to go in and prevent occurrences from happening. Where we identify that there's a serious risk of fire and that life or safety may be at risk, we can go in and take certain actions.

I would think that if the emergency were broader than fire, those powers would need to reside somewhere, whether they were related to the fire service or to any of the emergency services.

Ms Broten: In another piece of legislation and with another agency?

Mr Crawford: Yes, but be available for the different emergency services to work on as a team if that type of response was needed to deal with that emergency.

Ms Broten: Can you just expand a little bit on the prevention powers? I'm wondering whether you could provide us with an example where you would not have the ability to take preventive measures because they're not associated with fire, which you may have been called upon to do in the past.

Mr Crawford: Whether you're looking at section 15 in our act, which allows us to take some immediate actions, or section 19, which is our more routine inspection powers, they allow the fire service to go in and do an inspection. If it's a case of section 15, where there's an immediate threat to life, it allows the fire service to take some immediate action. Otherwise, the legislation would have the fire service issuing the order with an order. The order would cover the necessary safeguards that needed to be dealt with. Typically they relate to things like fire alarm systems, exiting from buildings—all those areas that have been well identified over time as being issues related to fire safety and fire prevention.

If you were looking for preventive issues on other subjects outside of fire, I think our legislation is a reasonable model in that we do cover both the preventive and the response side.

Have we been faced with an example outside of that? I can't think of one. The closest we would have come would be with some of the anthrax concerns that came about a couple of years ago when we had a number of substances being received in locations—white powder or an unknown substance or those types of things. The emergency responders were dealing with those together on an emergency basis. I don't know that we would ever get into some preventive issue, but that's the type of situation where you may want to look at some of our powers and think of them from the preventive side.

Ms Broten: My next question is for Mr Harbinson. In your presentation, you didn't talk to us about where OVERT and the individuals who volunteer with that organization receive their ability to undertake the actions they undertake, in terms of whether it's powers through delegated authority or something of that nature. I'm wondering if you can just comment on where the authority comes from and whether there have been any issues with respect to having proper authority to take the necessary steps in the actions you've undertaken across the province.

Mr Harbinson: In our particular case, in most cases we escalate to the services. More than anything else we're providing them with intelligence and escalating to them. So most of the powers given to us are delegation powers. Certainly internally we will have—I think it's actually representative of here. Everyone who's currently sitting here to present to the committee are volunteers for our organization. I have Toronto police officers, Toronto EMS, a number of firefighter volunteers and the OPP. I'm not quite sure how the powers would reflect to them when they're off duty. In our particular case, we are strictly there as a supportive resource to the emergency services and, as such, would escalate to them anything that needs to be escalated. Again, it's a delegated power that we escalate to them.

1410

Mr Garfield Dunlop (Simcoe North): First of all, I want to welcome everybody here today. It has been very interesting to hear the comments as we go around the table here.

To begin with, I just wanted to say something that I thought was kind of ironic or a little bit funny: the fact that I didn't see the armed forces here. I kept thinking of Mel's snowstorm a couple of years ago. I guess that was considered an emergency service at the time.

On a personal note, I want to begin by saying that in the types of emergencies that I've seen take place in the province of Ontario, it appears that things work quite well. I was hearing that around the table that, as the plan unfolds, people seem to be fairly happy with the plan we have in place today.

Maybe it was brought out to the committee in each of your presentations, but I would ask people who presented, if there was one thing they'd change or one thing they would request from the government of Ontario, what would it be—if it's OK, Mr Chair, to ask that—whether it's a change in legislation, whether it's a change in—I heard the word “funding” brought up a couple of times. I just wanted to get my head around what the people who are presenting would actually request from the province today.

The Acting Chair: Is there anybody who wants to respond to that?

Mr Stasyna: One of the things I would probably emphasize is a sustained level of awareness. Now, if that manifests itself in sustained funding, sustained practice, sustained training and education—again, I go back to my theme of Canadiana. Once these recent events become

distant in memory, we tend to lose interest, and everything goes to a back burner. Now, I'm not articulating that we should all build "Diefenbunkers" again and prepare for the rest or anything like that. Hopefully, those days are gone. However, we have to have a sustained level of interest and awareness. That's not just promoted through funding, but you've taken a step from the provincial level already, and that's the appointment of Dr Young as the commissioner of emergency management. It's fairly high-profile.

Continued practice: That's not just training and education that we deliver to our front-line troops, but practice. I'm going to put to you how many times in Canada the emergency preparedness should be done from the individual up. That's the procedure, unlike the United States, where it's top down, but they have a lot of resources from the federal government. So we've got to practice this, continue the awareness level with each individual—the media helps us with that and sometimes hinders us—and promote that among the emergency responders throughout the communities in Ontario: police, fire, EMS and public health practising on a larger scale.

Again, as was mentioned by Mr Macintyre, the exercise collaboration that we put on at Humber College was a practice event. We trained for confidence. We didn't train to humiliate one individual service. We didn't train to try to expose weaknesses of another service. We trained to co-operate together in a military concept to command large formations of troops and resources together, because that's something non-military organizations like police, fire and EMS do not do regularly. The military, as much as we like to poke fun sometimes at the way our Canadian Armed Forces equip, does practise that. They have the surge capacity to practise that, and they're very good at that.

If I have to just summarize, my comment here is continued awareness—even though we might not have an emergency for another five or 10 years of the proportions of what we had last year—and training to meet the challenge. We train for our everyday needs, our level 1 emergencies: a police B and E, an auto theft. All of those are emergencies in the eyes of the people we respond to. But something that involves the combined resources of municipalities or governments is something we have to address regularly.

Mr Dunlop: Does anybody have anything else they'd like to add to that?

Mr Van Doren: One of the things I'd like to emphasize is the need to communicate. I've been involved as the RCMP instant commander in a number of exercises involving a lot of the people who are around the table today. If there's one area where that continuously falls down, it's the ability to communicate across all agencies and all different levels and all different formats. The thing can go sideways so quickly if there's lack of communication between those agencies. Especially when you're surging up and initially responding to an incident, you all have to be on the same wavelength. I'm not sure how you'd accomplish that, if there could be a stan-

dardized communication system for emergencies across the province—or across the country would be even better—but that is something to consider.

Mr Crawford: I would just reinforce what both my colleagues have said. It's very important that we receive the ongoing support over time. When the event has happened, it's in everybody's awareness and there's strong support and those types of things. It may be a number of years before we have another event, but at the end of the day, it will be those emergency responders who will be going to that event. It's really important that in those lull periods we have the ongoing support so that we can continue to train, we can continue to put some of those resources into the inter-agency training and those type of things, so that we've had the opportunity to go through exercises. As my colleague said, the table-top exercises are very valuable to see what works well, what needs to be improved. We need to continue to keep that emphasis on being prepared over the times when maybe our memories start to dim about what's happened.

The Acting Chair: I think Mr Harbinson wanted to comment too.

Mr Harbinson: Mr Rowland is going to comment first.

The Acting Chair: Move closer to the microphone, Mr Rowland, and please identify yourself for Hansard.

Mr Steve Rowland: My name is Steve Rowland. I'm the team leader on the OVERT liaison with Durham region.

The one thing that we'd like to see is changes to WSIB. We're a wholly volunteer group of people who show up under some adverse conditions. If we can't get protection for our people, we won't have volunteers, which means the 150 well-trained, cross-trained people we have won't be showing up at places like the child abductions that went on in Toronto and the Peterborough floods and a number of other incidents that this organization has responded to. We won't be going and there will be a lack and it will be noticed.

The Acting Chair: Mr Dunlop, I think your time is up, and then we'll give you another chance.

Mr Dunlop: I appreciate that. Thank you.

The Acting Chair: Mr Kormos, 10 minutes.

Mr Kormos: I'm glad you raised that, because that obviously has been an issue with volunteer firefighters as well—the very same issue.

It's interesting, and of course we all agree—we'd be stupid not to agree—with the proposition of enhanced and ongoing training. But then conjoining that with the observation about not setting unattainable standards, it seems to me—what's the thermal imaging machine that firefighters use to find people in the dark, smoky—

Mr Crawford: Thermal imaging cameras.

Mr Kormos: Yes, thermal imaging cameras. It seems to me naive to train firefighters on the use of thermal imaging cameras when my firefighters down in Pelham have to hold bake sales, for Pete's sake.

Laughter.

Mr Kormos: Well, they do. They're doing god-damned car washes on weekends, nickel and diming to

raise money to buy one of these machines, and it's frustrating as all get out. You train them to use them, but then they don't have the tools. What the heck is the sense of going through the exercise? I want to throw that into the hopper, because I very much appreciate your comments about the need for enhanced and ongoing training.

You were very candid about talking about the big-city perspective. I come from Niagara region. We're among the top four or five, I guess, in Ontario. Like some of you, I've been up to places like Peawanuck and Attawapiskat, with one-person, two-person police forces, native policing. Mind you, what we call a crisis is often a day-to-day occurrence for them. It's part of their daily routine.

I really think it's important that we talk to folks and front-line emergency personnel from those kinds of communities because they are as vulnerable and as at risk as big-city Ontario. But you're talking about communities that rely, like many northern communities, almost entirely on volunteers for firefighters. They don't have the mass and the inherent resources that allow—police officers I've talked to up in Attawapiskat and Peawanuck, for example, get trained at the Ontario Police College and then never see the inside of a training program room again, ever, which is tragic. It's not that they don't want to. So I want to throw that into the hopper as well.

1420

Some folks were talking about evacuation. Of course, most of us were paying attention this weekend to CNN, watching Florida and the hurricane travelling through there. I'd like to know what you people think of when you're talking about evacuation. I paid special attention this weekend, among other things, because we've been talking about it here. What I understand takes place in Florida is that evacuation means you're asked to leave and you're told that there are no longer any municipal services being provided: "Don't count on electricity; don't count on sewers working; don't count on water supply." But from that point on it's, "So long, it's been good to know you." You talk about evacuating Toronto. We saw some of the problems. People were being evacuated, some of them into the path of the storm, which are the best-laid plans of mice and men.

On the issue of evacuation, what are you talking about when you talk about evacuation? Obviously we're talking about moving people out of the way of harm, but what are you talking about in terms of the logistics and the tools?

Mr Stasyna: With respect to Mr Kormos's question, he brings up some good points here. Within the Toronto perspective of evacuation, we look at definite sectors, basically in response to hazardous material or a chemical spill of some sort, to evacuate a sector that's immediately affected. A very recent example of that is the fire on Highway 27 at Martin Grove last week. There was very much a concern brought up by Toronto fire that there was evidence of chemical infection that might cause damage to businesses, and we evacuated that area.

We do have various evacuation contingencies within Toronto, but it would be misunderstood if one thinks that they could evacuate Toronto completely without causing any damage or harm. We practise an evacuation drill every day: It's called rush hour. If you look at that, that is an example. But imagine the congestion if we really had to do something like that. We have a core centre evacuation plan but that's just for a restricted core, from Spadina to Jarvis to Bloor Street and to the lakefront. You must realize that into that core fall a lot of important structures such as police headquarters, Emergency Management Ontario and a lot of other headquarters.

What we have trouble doing: There is a perception that, when evacuating Toronto, all the police would do—and we take the lead on that portion of it—is direct people out; traffic control and all that. It goes a lot further beyond that when you have an evacuation, as illustrated in Florida: sheltering; housing; contingencies for animals, the infirm, infants, those in hospitals, movement of those types of people. That's why it's probably better—or the practice that we promote is shelter in place unless absolutely necessary, especially in a metropolis like this. In a smaller community, more sparsely populated, with less physical infrastructure, it's probably easier to remove and relocate people, but for a metropolis like Toronto or the greater Toronto area in general, that's not feasible. So we look at evacuation as a last attempt. The realization is the logistics that come after you tell everybody to get out: Where do they go and who feeds them?

Mr Harbinson: I think our experience in Peterborough was unique. It shows that you really deal with two types of evacuations: You deal with an immediate incident that requires an evacuation, and then, in the case of Peterborough, you have people living in conditions over extended periods of time who need to be evacuated and housed. Certainly in Peterborough the experience was that, I would estimate, close to 30% of the residents who were affected by the disaster had called in to the public assistance line asking for help, which created a huge backlog for Peterborough fire and rescue services, and that's why we were brought in to assist. In that case, it was going to each residence, evaluating their situation and then either educating them that they could go to the evacuation centre—because certainly we saw people who were living in conditions that were worse than a Third World country.

There are a lot of misconceptions about evacuation. You get people whose homes have received a significant amount of damage and under no circumstances are they going to leave, because they want to try to recover and save as much as they can. Certainly in Peterborough's case, a lot of people were concerned that if they went to an evacuation centre, it was going to result in some way in their not being able to go back to their homes. There were other cases where people were short on medicine and other medical equipment that had been damaged by the disaster, had called the public information line asking for help and were put on a waiting list for someone to

come out and see what their needs were. So we're dealing with two types of evacuations.

In the case of Peterborough, I think it's critical that we needed to be able to get out to the residents and identify those who needed assistance. Again, in Peterborough's case, the vast majority of people who needed assistance were the elderly, those who are low-income families and those with small children. If it had not been for escalation teams going out and evaluating people and identifying their needs as quickly as possible, I'm quite sure there would have been at least one or two fatalities from the Peterborough disaster.

When we deployed in Peterborough, it was approximately four days after the initial disaster had occurred, and there was a backlog of at least 100 residents who needed to be checked. Over the next three days that we were there, another 300 residents came in.

The big issue for us is that you deal with two types of evacuations. If people can't get to their residence, they'll go to an evacuation centre. But in Peterborough's case, if they could get to their residence, they stayed there even if it was detrimental to their health.

Mr Pilon: I would support those comments in terms of the different stages and what have you.

I think Mr Kormos was on point in terms of the smaller communities, particularly some of our First Nations territories. The focus is then on the community council. The emergency planning that takes place: The emergency service providers are one element of that emergency planning. As such, they may have different needs and different solutions, quite frankly, but in some cases it's just very difficult.

If you're dealing with an evacuation that relates to forest fire, for example, we work with closely with MNR and some of the northern communities where there is a forced evacuation of an area, and in some cases a total relocation of communities. It's not safe to be around those areas. Usually the emergency service providers are the last ones to depart the areas and then return. In some cases we have to leave people there for security purposes, which brings me to another point.

What we saw in Florida on the weekend suggests that perhaps the area is abandoned, which I would suggest isn't the case. In fact, there are service providers who stay on-site to provide security and ensure that there is no looting and what have you. I can relate to some personal experience in a few train derailments, most particularly the Mississauga train derailment, and reflect on some of the difficulties we had in dealing with people who had been evacuated and wanted to return to their homes. We had clear instructions that they were not to return, that we had responsibility for the security and safety of their property and their belongings, and as such we had to tightly control who went in and out and those types of things.

There are different elements to it, but the bottom line is that in that emergency you're trying to get the people out of it if there is a genuine danger to their lives. If not, as has been pointed out, we need to reach out to those people to make sure that (a) we've satisfied ourselves

that they are not in danger, or (b) that there is no need for assistance of some other kind that we're not aware of.

The Acting Chair: Thank you. What we'll do now is go around the table, and if there are questions or comments you'd like to make, we'll give everybody an opportunity to do so. Basically you can ask questions of the presenters or make comments, or presenters can ask questions of other presenters if they wish, or you can ask questions of the MPPs if you wish. We'll put your names down.

I should just mention, as the clerk gets some of the names down, that I will be going to Attawapiskat, along with the members of the finance and economic affairs committee, dealing with Mr Bisson's bill on native resources. I'm going to ask the clerk to perhaps contact the emergency service personnel in Attawapiskat and Moose Factory, and I think we're going to Sioux Lookout.

Mr Kormos: Mr Bisson knows every person in every one of those communities personally. He will take you right to their door.

The Acting Chair: I'm sure. Anyway, I hope to really do that and use the opportunity there later on in September.

Mrs Sandals was first, then Mr Zimmer, Mr Brownell and Mr Arthurs.

1430

Mrs Liz Sandals (Guelph-Wellington): I've got a number of questions here. First of all, to either Mr Crawford or Mr McKinnon, I understand what you're saying with respect to the preventive powers under the FPPA, that they are focused very much on fire as opposed to biological or chemical. When you get into the actual emergency powers that you may have with the FPPA, is the same situation true? Because in many cases it's the fire service that will be the first responder if there is a biological hazard, a chemical hazard. What sorts of powers do you have in those situations, in an actual emergency situation?

Mr Crawford: I'll respond briefly, and then maybe Mr McKinnon would like to add to it.

As I said earlier, in the Fire Protection and Prevention Act, fire protection services are a defined term, and they are actually defined quite broadly to include emergencies, rescues and those types of things. So we actually believe they are defined very broadly, and it does provide the fire service with some very broad authority to do what's necessary in the event of dealing with the emergency, as opposed to the preventive side.

Mr Barry McKinnon: I guess the other area is, while we were very comfortable that we would put firefighters into a scene under our legislation, we now find ourselves working with the OPP, for example, and members of their team going in with us to do an investigation or to work on the security aspects. No one has challenged that, no one has questioned us on that, but we need to make absolutely certain that we are not, in the middle of an emergency, faced with that. So we do work together co-operatively, and it's one of the areas that we certainly are

exploring to make sure we will not have a problem at the time of an emergency.

Mrs Sandals: This gets into some of the cross-jurisdictional things that a number of you have mentioned, that there are little bits of language in this act and little bits of language in another act, but how does it all come together in an emergency situation where you've got a number of different responders, and where does that overall power flow from in an emergency situation that involves a number of you? Am I capturing your concern?

Mr McKinnon: Yes.

Mrs Sandals: Would it be helpful, then, in an emergency that is at the point where it becomes more broadly based—so even if it starts out as a chemical emergency, for the sake of argument, you then have police and emergency services who become involved—if there were emergency powers that existed that were related to the issue of an emergency as opposed to whatever it is that you individually are responsible to, so that we're looking at something at a more generic level, as opposed to trying to anticipate each of your individual challenges?

I would leave that open to any of you to respond to.

Mr Stasyna: That's a very good comment with respect to command and control. I've learned that lesson. I'm fortunate to have some military experience under my belt here and try to apply some of the orders of battle, shall we say, when working in a joint task force. However, it doesn't work that well with civilian organizations, because we come from different backgrounds, different tribes, different collective bargaining agreements, and not a hodgepodge but an evolution of different provincial regulations that have evolved exclusively, separately, for different types of things.

So the challenge is, do we need something that centrally commands us in certain situations? I think that might be more destructive in the onset because we have to co-operatively work together. Guidance, regulations, opportunities, understandings—we do have very good protocols in Toronto with respect to things like hazmat or CBRN. Generally in hazmat, the fire will take the lead. However, if it's a chemical-biological incident, which could be almost identical in nature—

Mrs Sandals: And at the beginning, you probably don't know which you've got, necessarily.

Mr Stasyna: We don't. You're scrambling for information. But when police take responsibility for something like that, in that example, is when there is an element of criminality or an active shooter or something of that nature which may cause jeopardy to all emergency responders.

To create a template that says, "So-and-so will do this in this situation"—there are many of those within our own organization, as we have our service rules and regulations. I'm not sure if you could get something that could work on a provincial level other than a guidance type of operation.

Again, the key here is to practise it and train for confidence. I know I'm going back to that theme, but I think what I learned in running a couple of exercises,

particularly joint services, is that you can't purely employ a military doctor in the orders of battle, and the artillery, the infantry and the army will do this and that, because we come from different organizations. It just doesn't work that way, unfortunately. Life would be a lot easier if it did, but we're a civilian organization, so we have our intricacies to our community and ourselves.

What I would sum up in response to your question is that guidance documents, scenario building based on risk analysis in most communities, are either conducting or have finished conducting their HIRAs, their hierarchical incidents and risk analyses, so that they know what their major risks in their communities to an emergency disaster are, and hopefully can respond better in a joint services type of operation.

The Acting Chair: OK. Mr McKinnon.

Mr McKinnon: It is very difficult, as we indicated in our presentation, to plan specifically for the incidents, so the idea of some broader power is important. But I think what's also important is that we have a structure that recognizes that we'll have to analyze the situation. For example, in our illustration we had the ministry action group talking to the provincial operations centre talking to the emergency operations centre in the community. That's crucial as we go through and analyze what's necessary and who has the ability to make the legislative change, for example, to drivers' licences. That came out of that very structure of our communicating and talking back and forth.

It's also crucial that we carry on and have things like common incident management systems, and stress that we continue those so that, as that changes from fire command to police command, we understand that's going to happen—it's a seamless transition—that we have an ability to communicate together in a language that we understand. That, while it doesn't solve the legislation problem, gets us talking. We work from a unified front, and when we do that, legislation isn't always as difficult to move through.

The Acting Chair: I think Mr Pilon would also like to respond to Mrs Sandals.

Mrs Sandals: And I have a question that flows from something else that was mentioned.

The Acting Chair: What we're going to do then is move on and you'll get a chance again, Mrs Sandals.

Mr Pilon: I just wanted to add one comment in support of what has been said here. I think, in an ideal situation, you might be able to have some piece of overriding legislation that says the police do this, the fire people do this, the emergency services/medical do this, and what have you, in an emergency. But as has been pointed out, sometimes you'll start out with a simple occurrence that escalates and has to be dealt with in a variety of ways. I think, in fairness to everyone who's here today and to others providing the service across the province and the country, we have very professional services available in this province. People know their jobs, and I think experience has told us that as long as we can get together—and the training and everything is very

necessary. But in cases where there is any confusion, there has always been the ability to come together as a joint management group of some sort and get these issues sorted out.

In a perfect world you might have one piece of legislation that says, "Here are all the powers that we bestow upon everyone, all the emergency service providers, for an emergency." But the situation will vary so dramatically from one situation to another that I just don't think you could capture everything. I think there are sufficient authorities vested in the various acts that are out there for us to be able to do our job. The key is for us to do it jointly.

Mrs Sandals: So if I could summarize, then, the committee should be careful that if we're looking at additional powers, we should not be too specific, that trying to anticipate specific emergencies is probably a downfall. If we are going to do anything in terms of provincial emergency legislation, it should be relatively generic in nature, and it's absolutely essential that it give maximum flexibility to respond to whatever emergency presents itself, rather than our having in mind some specific emergency situation that we're trying to solve. It's more a generic framework that's required rather than specific details.

Mr Pilon: That would be my submission.

1440

Mr David Zimmer (Willowdale): Picking up on what Mrs Sandals said and on some of your previous answers—and my question will be to Commissioner Pilon—in planning for these big emergencies, I suppose there are really two approaches if there were legislation arising. One would be a piece of legislation that gave very general, broad powers to the police, fire service and emergency medical response teams. The other approach would be a piece of legislation in which everything was codified and detailed to the nth degree—that so-and-so did this in conjunction with so-and-so—and which got right down into the minutiae.

I'd be very interested in whether you would prefer a general approach to emergency legislation or what I'll refer to as the codification approach. I'd also like responses from the emergency medical response, the fire marshal and the RCMP.

Mr Pilon: As I mentioned previously, I think there's a danger in trying to codify everything. My suggestion would be that somewhere along the line we would miss something. From that perspective, I would be more inclined to support broader, principle-based approaches to the issue which allow each of us to do our own function effectively but do it together. I just don't know that you would be able to capture everything in an attempt to codify every emergency we would face.

Mr Zimmer: Perhaps I could hear from the fire marshal on that point: codification or more general, broad, sweeping powers?

Mr Crawford: We think there's a need that whatever is in place be flexible so it can deal with emergencies that we around the table today probably haven't even thought

of. From that standpoint, we would be supportive of the concepts of identifying powers related to principles and those types of things, as opposed to getting "down into the minutiae"—I think those were your words—or the details. I think that may ultimately constrain us when we need to deal with a situation.

Mr Zimmer: Emergency medical?

Mr Macintyre: I would agree with that. I think there are probably some very specific things that need to be codified, but as an overriding principle, it needs to be flexible. With one-size-fits-all, you can't develop something that's going to cover everything. You need a broad-spectrum piece that's going to allow everybody to do what they have to do.

Mr Zimmer: The RCMP?

Mr Van Doren: Our approach is an all-hazards approach, and I guess that's an anti-codification type of approach. A general working concept that can be applied across all levels would enhance the response capability. All-hazards can effect that.

As a quick example, under the instant command program, there are basically about three different types of instant command approaches in place right now. If we could standardize those, that would make it much simpler to respond.

Mr Zimmer: I asked that question because there's the so-called 1981 paper, which I think everybody has a copy of, in which they dealt with this question of whether to take the broad planning approach or, in effect, get into codifying and listing a whole series of problems. In 1981, they opted for the more general approach. The idea was that there were sufficient powers scattered around in various acts, and that with attention on planning, they could pull those powers together and use them effectively.

My last question, again to the same people who answered the last question: Can you tell me what your experience has been in sorting out the, I suppose, inevitable jurisdictional disputes that arise between the fire marshal, the RCMP, the OPP and the emergency medical response? Perhaps we'll start with you.

Mr Pilon: You've heard, over the years, that there were these jurisdictional issues. I'm not going to say they did not exist, but I don't think they were as acute as some may have portrayed them. In the case of policing, I think that whether I'm a police officer for the city of Toronto, the town of Midland or the province of Ontario, it's recognized that we're all sworn in for the province of Ontario. It's a little different for the RCMP and those at the federal level.

Just going to recent history, 9/11 changed the world we live in. People don't think in those terms any more. People think more in terms of, "Let's get this done, and let's help each other get it done." So I don't think the jurisdictional issues are as acute as they were portrayed to be at one time.

Mr Zimmer: Emergency medical?

Mr Macintyre: I would tend to agree. There are always conflicts and egos in any incident, but most of

those are dealt with at a micro level as they occur. At a higher level, I think we share the sandbox pretty well. I think it's a tribute to us and to Canadians that we don't have these huge, high-level, ongoing jurisdictional battles.

Mr Zimmer: Fire marshal?

Mr Crawford: Certainly our experience has been that we've co-operated very well. Some of the results that I think we've seen in some of the most recent emergencies were because the emergency responders were together. They discussed the issues, solved them and got on with the business at hand.

It's been my experience that those issues crop up and will always crop up in any emergency situation. I think everybody who is around the table, or wherever we might be, realizes that our ultimate goal is public safety. That's what we're there for. We resolve those differences with that in mind. Certainly, as I said, I think our experience has been good.

We've also been working on some of those training initiatives that I talked about earlier, so we can work some of those issues or disagreements through the system earlier, before we're actually faced with dealing with them in an emergency situation. I think we've done well.

Mr Zimmer: RCMP?

Mr Van Doren: There's a spirit of co-operation that now exists in the province of Ontario that has never existed in the past. It's unprecedented, and 9/11 was a huge catalyst toward that. But beyond 9/11, we've been working toward that goal for a decade or two in the province. Although we've always worked well with other police agencies, some of them represented here today, we've now extended that spirit of co-operation to all the other emergency services in the province.

Mr Zimmer: I appreciate your answers to the last question.

Do you see any benefit in having an office or designated person in Ontario, should a jurisdictional conflict arise, who has the hammer on a very contentious jurisdictional—it may not even be a jurisdictional approach but just a philosophical difference in how an emergency should be dealt with? Should there be one person who has the hammer?

Mr Pilon: I can't envision a situation where we couldn't resolve the issue. Having said that, I think there is an ultimate authority. If we look in the world of policing, we have a minister who's responsible for policing issues. I suspect, at the end of the day, if you laid out all the ministries and what have you, we have a Premier who could resolve issues. That would be my response. I just can't envision a situation we could not resolve.

Mr Zimmer: Just a quick response from the other three. Those are my questions.

Mr Macintyre: I would agree. At the end of the day, the Premier would make a decision, or Dr Young, in an emergency situation.

Mr Van Doren: I concur in those comments. One quick addition is that we talk about leads in different situations. It's not unique that we have joint command

structures. We have done those on a regular basis. The OPP has done it with Peel recently on a national counter-terrorism plan, where we have joint instant command leaders.

Mr Zimmer: Fire marshal?

Mr Crawford: I agree that it would be very difficult to have a situation in mind where we haven't been able to resolve it, because we have worked very well together. I guess, at the end of the day, all of us believe there is somebody there, depending on what level you want to identify it at, who would make a decision, whether it be the Premier, his or her designate or whatever. I think the system is there, or at least we expect it would be there. In that one-in-a-million situation, or one in 100, somebody would have to make a decision and we would then get on with things.

1450

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): My question is probably to Peter Macintyre, but anyone else. I did have a number of questions, and most have been answered.

Because I lived through the ice storm of 1998—in fact, I was the first mayor of South Stormont when that hit—there were challenges that I faced on a daily basis as we worked over those 16 to 20 days. One of the greatest challenges was accommodating the senior population of the municipality.

We're heading into the seventh anniversary of that event, and over those seven years I know there has been a move and there is going to be a greater move in the future to keep seniors in their homes and to keep the aged population with home care and the like. Is this presenting challenges to emergency—you've probably seen this, and anybody else who would like to respond. What are the challenges, how are you coping and what do you see in the future? This might get into something specific in emergencies, which you said—

Mrs Sandals: That's OK.

Mr Brownell: But just for my own satisfaction, I am very interested in this. I'm now in the health ministry and I'm very concerned with regard to how we deal with the frail and the elderly, whom we are encouraging to be kept in our homes.

Mr Macintyre: That's a very good point. Younger people, if there's an emergency, can get out. But if you're confined to a wheelchair, if you're bedridden or mobility impaired, it's very difficult to get out. The challenge is identifying who all these people are, because there is no central registry—to put it in very crass terms, there is no registry of old people; there is no registry of people in wheelchairs. We are working now to develop lists of people who are ventilator-dependent, for instance. We identified that as a result of the blackout because those are people, clearly, if the power is going to be off for a period of time, whom we need help now.

But the issue is, who are these people? We don't know. A central registry is maybe the way to go, or at least agencies having their own lists and groups of people that share those lists on an ongoing basis.

As more and more people are staying in their homes longer, in an emergency—remember, for us to get a person out of their house and take them to a shelter, take them somewhere else, requires, in our case, two paramedics and an ambulance. On a typical day we have 95 ambulances working in Toronto. That means theoretically we can move 95 people at once, but that means we have no ambulances responding to anything else. So clearly, we're going to be faced with the issue of how we are going to move these patients, and I think the volunteer sector—St John Ambulance, fire service, all kinds of agencies—is going to have to become involved in it. Clearly, that is a huge issue. Certainly, in the ice storm one of the issues was that we couldn't get around. If there's four feet of snow on the ground, nobody is going anywhere, except if we can get Ski-Doos to go to the house and pick them up. So it does create very significant issues.

Mr Crawford: Certainly the changing demographic is something that we're well aware of from the fire safety point of view on a day-to-day basis. We've been successful with bringing our fire losses down. We recognize we have an aging population, and our seniors are one of the most at-risk groups from fire. When you add that together, just on a day-to-day basis, we recognize that we do have challenges coming down the road. We've been working on some targeted public education programs; for example, trying to get the message out very clearly to those who look after the elderly that they need to take responsibility and work with that senior on what to do from a fire safety point of view, just on a day-to-day basis.

When you overlay an emergency on top of that you would just compound the issue or the problem. We need to be proactive and we have been proactive, as I said, on some of these education initiatives and those type of things. But in a long-term emergency situation it could create some significant difficulties.

The Acting Chair: If I may comment, I recall there was a story about an elderly lady who wouldn't be evacuated because she was more concerned about her pets rather than herself. She had to get assurances that her 10 cats would be taken care of. I think you mentioned that too, Shane. There are so many other ancillary parts to evacuation that come into play here.

The next question is from Wayne Arthurs.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): Just for my purposes, what I've heard the emergency service providers' responder saying is that there's an ongoing need for preparedness, whether it's education, training, coordination or paying the insurance premium—that's one focus—and that there's a need to protect either volunteer or employed emergency workers, particularly when it comes to health-related information. That seemed to be a bit of a theme. I didn't hear that there were any particular broad deficiencies identified in managing people or property during an emergency situation. Is that a fair assessment of the overview of the issues around emergency management legislation? I'm happy to hear

from anyone in that regard. Is there something that is not there?

Mr Stasyna: With respect to property, are you referring to the security of it, such as in an evacuated area? I'm not sure.

Mr Arthurs: I mean more generally. I wasn't hearing any substantive concerns being expressed, collectively and individually, over the ability of the responders during an emergency to be able to manage people or property. There didn't seem to be a significant situation where powers weren't substantively there that allowed you to do what you needed to do. You're probably too wrapped up in trying to get the job done at that point in time rather than having to worry about some minuscule issue that some additional power might provide for.

Mr Stasyna: I'm going to go to two perspectives here. I'm going to take Mr Kormos's comment of the small community versus the large community of Toronto with respect to things like evacuations, management of people, movement and property. In a small community, you might actually have an easier time, for a number of reasons, because there are fewer people and less property. However, you also have fewer resources to counter that. On the other side of the pendulum, we have greater resources in Toronto to do that but a greater number of people.

But it's not only the numbers we're looking at. I bring the diversity issue up now. With respect to Toronto, we have a multitude of cultures, languages and religions, who may all take different slants on the perception of leaving their home and property in the care of others or even understanding what it is they are to do. One of the things we looked at in the core evacuation plan is how we move people out who don't understand English or French. We speak a number of languages through our 911 call centre, but we don't communicate those out. We don't have an emergency notification, a separate frequency. I remember we used to listen to the old Buffalo one: "This is a test of the emergency broadcast network. This is only a test." We don't really have such an integrated system. We get excellent co-operation for communicating that from a lot of our media representatives, such as 680 News or CP24. They get the message out, or they're good at making up the message to get out if they don't get the proper information at times. I could provide a few anecdotes on that, but we're limited.

So there are a number of issues here. To summarize my answer to the question, we feel confident in certain realms, but it's a community-based issue. That's why, going back to Mrs Sandals, you can't create a cookie-cutter template for a lot of things. But you can do it for a couple of things, such as the provincial nuclear emergency response plan, PNERP, or the provincial liquid emergency response plan, called PLERP, where you can say, "This community will do that; that community will do this," where you have a high-risk event which affects not just one community, where everybody would scramble to do something. We're confident and certain around this, but we've got to look at it from a community

perspective. One cookie cutter doesn't fit all in that respect.

The Acting Chair: I think Mr Pilon wanted to comment.

Mr Pilon: I just wanted to add—and I agree with everything Greg is saying, and this is where I guess it comes in—that we, being the OPP, are a municipal service in many areas of the province but we are also a provincial service. Just as Greg has pointed out, when we have an emergency at a local level—a small municipality, for example—that may involve, from our perspective, redeploying some of our personnel. That's when the provincial side kicks in and we're able to do that. Depending on the size of the event or the disaster or the emergency, that will dictate the type of resources we need to redeploy.

1500

What we found during the ice storm and during other activities was that our personnel, who are on the front line doing an excellent job, are used to doing that type of activity. It's second nature to them. They respond; they do what they're trained to do. But at the same time there are personnel issues that surface, particularly when they are away for extended periods of time. Their family is left behind to cope. We had people who were out helping others, but their own family did not have power for days on end. So there are those issues that come into play. But I don't think that's a situation that can be remedied by legislation. I just wanted to add that.

The Acting Chair: Mr McKinnon?

Mr McKinnon: We've done well in the past, but I think where we're really going is to the future.

Let me cite an example: the threat of avian flu and how the culture here in Ontario has changed. Dr Young brought together planners from all ministries that would be involved. We examined what was going on in British Columbia. That was going on weekly. We were looking at legislative impacts. We were looking at what the role of the police, the role of fire and the role of health would be. I think that's the change, and we need that continued support so in future we'll say, "No, it's not an issue," because we examined the legislation. We knew exactly what the impacts were to veterinarians should that come along. There were some major issues that came out of that pre-planning.

This is not all about response; it is about being ready ahead of time. That is the change we have in Ontario that we didn't have before. We need to continue and support that.

The Acting Chair: Next is Mr Dunlop.

Mr Dunlop: Just a couple of quick questions. One is to the office of the fire marshal. I never even thought of this until it was brought up earlier in the meeting, and that's with our First Nations and forest firefighting by MNR. I know they do a lot of forest firefighting across our province. What is your connection to MNR and that particular program and policy and how they work with First Nations in our north?

Mr McKinnon: Basically what happens is that MNR firefighters look after the forest fires. Our office looks after the protection of assets that are in the community. We actually deploy people and work with the local community to sprinkler the community to protect it, regardless of whether it's First Nation or our unorganized communities. We bring in resources and work in co-operation with MNR to support them in their endeavours.

Mr Dunlop: Thanks so much.

My second question, Chair, is probably to you. As we work away through this committee on recommendations and a report or legislative changes, at what point will we look at funding? I say that because I've heard resources for awareness, communications and training brought up. Will that be part of our report that goes back to the different ministries or to the Office of the Premier as we look at recommendations for assistance from some of the people who have brought that to our attention?

The Acting Chair: Yes; basically there are two parts to our mandate. We are to present a report. We're going to have a summary of all the presentations, and I think our report will be based on those summaries and those presentations. Therefore, there may be indications in the final report, for instance, that the training component should be an enhanced part of our preparedness, that there seems to be a need for more enhanced training and preparation and the resources necessary to undertake that.

In the legislative part, I was thinking as the presentations were being made that perhaps one of the recommendations of this committee would be to put forth a proposal on the training component of emergency preparedness, that this be part of something that perhaps is provincially directed or mandated to enhance training, which implies that there may need be some resources for that. That is, I think, the best I can answer your question.

Mr Dunlop: I'm just curious where we'll go with that. That may come up again as we work our way through the next couple of weeks with different presentations.

The Acting Chair: That's why I think it's valuable to get—like today, I think we got some pretty specific messages on that training aspect that is critically important in terms of preparedness, along with emergency powers. The powers aren't any good unless you have the training capacity there that will enable those powers to be enacted in a way to deliver emergency protection.

Again, I think it's ultimately up to the committee to decide on where they want to go with resources and direction to the provincial government on what they should do. I would just like to also say that I think we're open for suggestions from the expert presenters on where a provincial government could best put its resources.

For instance, I think Mr Macintyre mentioned this cross-jurisdictional complexity of workers being quarantined in Durham as opposed to Toronto, and the fact that they couldn't get the workers across their borders because there were different health directives from local public health. That's an area where maybe this committee may want to make direction in their legislative report or in some kind of final piece of legislation.

Those are specific things that I think this committee's going to be charged with and grappling with: How do you do it from just a resource perspective or in a legislative framework? That's what we're going to have to find.

Mr Zimmer: Are you still doing questions?

The Acting Chair: Yes. I have Mr Kormos on, and then we can go back to Mr Zimmer and Mrs Sandals. Ms Broten is after Mr Kormos, actually. Mr Kormos?

Mr Kormos: First, I want to make sure people reading the transcript understand. I'm not one of the folks here who are equating old age with infirmity or with idiosyncratic behaviour. So my friends in CARP and the united association of senior citizens can rest assured that I am not stigmatizing senior citizens. I recognize that infirmity is an independent issue from old age, as is idiosyncratic behaviour. My neighbour wouldn't leave the house for a million years because of her darned cats, and trust me, she's not even 40.

I want to refer to—

The Acting Chair: It's how old the cats are that's important.

Mr Kormos: Well, I'm the neighbour. She's got the seven cats, but I'm the neighbour, let me tell you.

Interjection.

Mr Kormos: Well, no. As soon as the politicians moved in there with their property values, let me tell you.

Referring to that 1981 white paper—and McMurtry, as he was then, was a pretty smart guy back in 1981, and Judge McMurtry, as he is now, is a pretty smart guy. It's interesting, because in the "Special Powers" references there—I urge folks to take a look at it; it's pages 26, 27, 28—he addresses the issue of the granting of special powers authorized in the entry of private property and the commandeering of property in an emergency, and goes on to say, "It is felt that existing powers are adequate to deal with emergencies, both large and small."

It goes on to talk about evacuation and codifying the power of the police to compel the evacuation of an area. It says, "After due consideration, however, we have come to the conclusion that an attempt to codify such powers is not necessary and may perhaps be unwise." It then goes on, as others have referenced, to say, "We think it preferable that the common law powers of police and other emergency personnel continue to be delimited"—I'm not sure "delimited" was the word; it might have been the way the typist typed the word, but it could well have been. "Delimited": I'll put in [sic] after that in brackets—"by the courts, and that the emphasis of the draft bill focus on emergency planning."

1510

I suppose one of my concerns, and I put this to you gentlemen, is that especially in this age there is a passion for protecting all of us against every possible contingency. I wear my seat belts religiously. But there is somehow this sense that we can protect everybody against every possible risk that being alive and living in the real world entails. The fact is, if you live on the coast of Florida, you're at risk. If you live in parts of Cali-

fornia, because of the underlying geography, you're at risk of earthquakes. Canada is pretty blessed, because we tend not to have those huge natural disasters. Canada has been pretty immune—a small tornado in Barrie, a snow-fall of 1978 down in Niagara, the ice storms. So I'm concerned about the prospect of overplanning and trying to guard ourselves against every possible contingency of being alive.

I do want to talk about communication, and I hear what you're saying about communication, but you also prompted me to reflect on the fact that I've got fire services and a police force down in Niagara—a fairly new police force, the Niagara regional police; not an old police force. I drive from Welland and Toronto, and there are at least three spots on the QEW where my cellphone breaks down and ends the communication. I'm talking to police officers and firefighters in urban southern Ontario who talk about problems not with interjurisdictional communication, but problems in communicating during their response to an emergency. Again, I'm seeing police services strapped for money, being told by councils that there's no more money, and firefighting services being told by their councils that there's no more money.

Perhaps to the fire marshal's office, and then to the policing personnel and EMS: If we're going to do things, shouldn't we have an agenda and talk about prioritizing things? How wise would it be to say, "Let's pursue as number 1 on the agenda a consistent quality of communications resources—equipment, tools—for front-line emergency response teams across the province"? Then we've got that out of the way—you know what I'm saying?—at least maybe for the next 20 years, until technology improves.

Are these folks correct when they say there are real problems in that area?

Mr McKinnon: In fact, there are two working groups established right now, one on incident management and one on this very issue of interoperability. Dr Young directed that those be put in place, and EMO chairs those two particular committees.

On the issue of interoperability, we are attempting to come up with systems in the short term that will allow the key leaders to talk to key leaders. Simply to get the technology to allow everybody to talk to everybody is insurmountable right now, and we're not convinced we need that. But we do need to be able to talk leaders to leaders. We have published, through that committee, a discussion paper. It's gone out to all the emergency services, so they will at least start to think about that as they start to purchase new technology. This is not a short fix. Radio communications technology is very expensive. If you've just spent \$2 million or \$3 million for an eight-year project, you're not going to change that out right away. So what we're talking about there is transition.

We have established a third committee, and that is to look at common, plain language. Right now, that is being coordinated through our office, but it is likely to extend to the other groups in the near future. We are developing a draft paper that will talk about how we can communicate very effectively, in plain language, so, for example,

Toronto police and fire have an agreement that whenever they interact, they will talk in simple language; they will make sure that they can communicate effectively.

We are working on the two pieces: the technology that will allow you to talk, and then a language that we can understand.

Mr Stasyna: I'm just going to reiterate the remark from the Ontario fire marshal. In Toronto, we have taken some municipal steps in correcting some of this debacle. We've instituted the joint emergency services channel, which technically allows us to dial on our own radios a common set of communications channels that police, fire and EMS can talk to. That's step one.

What Mr Kormos is also referring to is the third element of C3—command, control and communications—which is the glue that holds command and control together. As was also brought up by the Ontario fire marshal, we've all developed, from our own tribal rituals of communicating, different 10 codes, protocols and procedures. That has to be done as well. Should we have something that's common? I personally—and I think everybody I've spoken to within policing—think so. We've evolved through the evolution of technology. We've corrected and combined some of it. Let's say in Toronto, we've combined the 911 communication service. That branches out, but it can get a lot better than that.

The technology is expensive, but I think our only answer to cutting down the expense of it somewhat and making it more effective is to get some sort of consolidated system that can be used by everyone. If it's a common radio system—and we also say common computer systems—it branches out from just that one means, so that we can all talk together with ease and functionality. The highest vendor is not always the best one to go with. The market is ruled by a number of highly rated professional companies that can deliver, but I guess before we buy into everything, as the Ontario fire marshal alluded to previously, we all have to have input into this, and also not forget the way the pendulum switches or swings from a large community like Toronto back down to your small communities that may have some different needs for their communication systems, where they only have Harry, Larry and Moe as police, fire and EMS, running their emergency services.

Mr Harbinson: Again, a comment from our experience in Peterborough: I know one of the issues that Peterborough fire had was that I believe their infrastructure couldn't handle any more than six or seven additional crews at a time. It's not just an issue of the fact that people are on different communication channels, but their dispatch centre is only organized to handle so many crews at a time. One of the benefits we're able to provide is that when we attend, we come as a plug and play. We come with our own instant command system, our own communications system, to help them organize. Certainly an observation from Peterborough is that they only had so many extra radios. Just about every one of the fire crews that came up there were from different fire depart-

ments, different radios, different communications, and although for the most part they all talked the same talk, the communication systems wouldn't allow them to do it. So the infrastructure was the other issue, not just the equipment.

Mr Kormos: Mr Stasyna, if I may, you showed your hand when you made reference to the military in your initial comments. I knew then that you had a military connection. Most people who didn't have a military connection wouldn't even think of making that reference. I come from Niagara, as I told you. It's a community where there's a strong movement to—as a matter of fact, the reserve has just announced restoring the Welland armouries, in addition to the St Catharines-based Lincoln and Welland. So I am a part of that community that is encouraging a stronger reserve component.

I was surprised—and again, I'm loath to refer to the Senate committee's report, because of course they are unelected, they are thoroughly undemocratic and not representative of anyone other than politically connected wealthy people. But I was surprised to learn their observation that our military was ill-prepared—this was their observation—to participate or respond to the types of emergencies that are being canvassed when we talk about emergencies. Again, I was surprised because that ran contrary to the reservists, for instance, whom I know at Lincoln and Welland Regiment. I'm hard-pressed to believe that. It runs contrary to their participation in the ice storm, for instance.

Appreciating that you may not be here in your capacity other than as a member of Metro Toronto and on behalf of the chiefs of police, but now that you're here, I'm opening the door. One of the things I think most of us instinctively say is, if you're going to talk about emergency preparedness, yes, we talk about our professional full-time units, we talk about volunteers, be they overt, be they volunteer firefighters, but we also talk about reserve units, are not spread across Ontario as much as they used to be but they are spread across Ontario. What about the observation that was made that they're not equipped, and where do we go from there?

1520

Mr Stasyna: I'll speak as an individual part-time reserve soldier. Again, I'm not expressing any policy of command because I'm not representing them, but you ask a darn good question. In my opinion, in my 21 years of experience being army reserve and some regular force, it's not that they're ill-equipped, although there are problems, and it's not that they're incapable—that's not the case. It's that there is a general level of ignorance about the use of our military within domestic operations.

Unfortunately, there was somewhat of a quasi-precedent set some years ago, with then-Mayor Mel Lastman of Toronto phoning directly and getting the military. That's not the way it works. We go through the province. Quebec is very good at getting them in for assistance. They've used them quite a bit. We don't, but they are there.

There are four different categories of assistance they have codified and can provide, which are very useful,

everything from disaster relief to deploying DART—disaster assistance relief teams—to armed assistance to law enforcement agencies in support of policing. However, there are distinct protocols.

To answer your question, Mr Kormos—and it's a darned good question—I think the problem is not that we don't have troops available, and it's not that they don't have enough equipment, although there are problems there. It's that people from the municipal level and the community level don't perceive how to get to them and how to use them. They have very strict rules of engagement within Canada for how they run domestic operations. In Toronto, there are troops available for certain types of domestic operations, who can be gotten fairly quickly if the protocols are used correctly. They're there, they're capable and they're definitely at the community level.

You gave the example of the Lincoln and Welland Regiment, which is a local reserve regiment. It has become more prevalent in past years, particularly since 9/11, that they've been used for domestic assistance—the ice storm. So the perception is that the military don't just walk around with guns fighting wars; they're a domestic response force capable of responding to any type of emergency, whether it be cutting up trees from disastrous hurricanes on the east coast last year, fighting fires in BC or coming down to Toronto in a snowstorm to help with transport, clearance of roads, triage and all that good medical stuff. So they're there.

Mr Kormos: Chair, I appreciate that you've got to move on, but I do want to hear from—

Mr Van Doren: The military are actually very attuned to domestic operations. As a matter of fact, before I came here today, we were up at the military base at 1 Yukon Lane. They have very elaborate plans in place to deal with domestic operations. The reason we were there this morning was to talk about running an exercise that would involve the RCMP, the OPP—many of the participants who are here today—in order to validate those plans and make sure they do perceive and tend to the needs of domestic operations.

So they're there, and they're very capable. There's a big difference between deploying for a domestic operation and having a member of the military on the street with a gun. There are protocols in place. They are very attuned to that, Mr Kormos, and they're talking about exercising those plans as we speak.

Mr Kormos: Thank you, sir. Chair, another argument for the abolition of the Senate: The report seems to be way off base.

Interjections.

Mr Kormos: Well, these are interesting comments. I'm just calling upon you, if we've got time and space, that perhaps it would be valuable to get some of the people from the reserve movement, I presume, to talk more directly about that. We've had comments here that I say show promise, rather than the negative comments in that Senate report.

The Acting Chair: I think we can certainly get in contact with a reserve unit, the Ontario command or

whatever. In fact, I just got an invitation to go up to Petawawa. I don't know if you know that restaurant at Dufferin and 401, Katz's Deli. He's a lieutenant colonel in the reserve and a drum master. He leads, I think, the Highlanders or whatever it is. Anyway, he's invited me to go up. I'll talk to him.

Mr Kormos: And great pastrami—you can tell him I said so.

The Acting Chair: He makes a great sandwich on the side. Sorry for the plug. Mr Pilon?

Mr Pilon: I was just going to add, Mr Chair, that the military has been very helpful in terms of providing equipment and responding, as needed, to other urgent requests we've made ourselves and on behalf of municipalities at certain times.

There are also issues that you may want to consider speaking to regular forces about, insofar as their policies, internal to the military, that in certain cases would prevent them from giving the assistance we would like to have.

I'll give an example of a public order issue. This may not be current, but they had a policy where they would not engage with the public if there was a protest or what have you. If the public police, if you will, were ever in need of assistance and had to call in the military, it just seems absurd that they would not engage, because we would obviously be in a situation where we could not handle it and would need that assistance. Where else would we turn?

All I'm pointing out is that you may want to have some dialogue with the military, as Mr Kormos pointed out.

The Acting Chair: Yes. In fact, if we could formally do that through the clerk, invite the appropriate contacts through the Canadian Forces and the Canadian reserves—

Mr Kormos: Art Eggleton isn't doing anything. Perhaps he could be pried away from his busy agenda.

The Acting Chair: I'm sure he would come too. He's the one who was the key link in getting the army here in Toronto with that snowstorm.

Mr Kormos: No kidding. The weakest link.

The Acting Chair: You can ask him about that too.

Ms Broten is next.

Ms Broten: I have three questions that I wanted to follow up with. First of all I want to say thank you to all of you for being here, because it has been very informative. I think we've all learned a lot today. For our first panel discussion, it has gone pretty well. Thank you very much for that.

One of the things this committee is searching for is certainly best practices, and an examination of best practices in other jurisdictions as well. When Dr Young appeared before us he mentioned a number of jurisdictions we may wish to look at which, from his perspective, had legislation or best practices that were helpful. I'm wondering if each of you from your own area of expertise could briefly identify for us legislation or best practices that exist in other provinces or juris-

dictions which we would be remiss not to take a look at as we conduct this examination.

Mr Harbinson: I'm glowing, so I guess I'll go first. In our particular case, we reviewed what was going on in the United States as well as in Canada and we developed a program that would work closer with the emergency services and other community groups, especially in Ontario, than they've done before.

The issue we currently have is that the number of agencies asking us to continue to provide them with service or expand service to them far outweighs our current capabilities and infrastructure. Right now I would guess we have about 28 municipalities we're providing service to and we have another 20 municipalities that currently are waiting for us to expand into their area. It's difficult to do that without provincial funding and support.

One of the things Ontario needs is a community response to major incidents. However, I think the best way that needs to be done is in a very organized and structured manner. Volunteers can be a great asset but they need to be very carefully selected, especially if they're going to be operational volunteers. They need to be very structured and they need to be integrated with significant numbers from the emergency services. If that's the case, they can positively work with the emergency services and take certain tasks from them that are supportive in nature to help them when they're overwhelmed. I think the best way for the province to approach that is that we need two agencies, at most, in the province that do it.

I think the other big thing we need with civilian volunteers is to give them experience, Peterborough again being a great example. Four years ago, OVERT could not have provided the services we just did in Peterborough. It's the experience the agency has garnered through working with Toronto emergency services, Port Hope, Durham, the OPP, Halton region, Hamilton-Wentworth and a number of other services that has allowed us to gather the experience necessary to provide additional services. I think that's why we see programs such as EMAT and HUSAR either coming to an agreement or negotiating with us for an agreement right now.

One of the biggest things we need to do at the community level—and it's a big problem right now—is that “emergency response team” has become the catchphrase of this millennium. Everybody is an emergency response team; everyone is an emergency response volunteer. Looking again at Peterborough, whenever we have a major media event, I swear there are another 20 emergency response teams that are suddenly created and that are contacting or trying to get hold of the incident commanders to be able to come out and help in any way they can. I think it's important that the province develop a practice where we can classify the professional emergency response teams as well as the volunteer side of it, and recognize that there is a significant difference between volunteer firefighters, OVERT and other third-, fourth- and fifth-tier community groups that are out there.

1530

One of the problems you have is that as an incident commander—and this certainly happened in Peterborough's case. I won't mention the team. There was an emergency response team that called up looking to get Peterborough to house them and feed them, and they were going to come up and assist in the disaster. Peterborough spent likely 30 to 45 minutes doing some research on the team, only to find out that it was a bunch of contractors that were coming up, hoping to get the municipality to house them and feed them so they could go around and charge residents service for helping them in a variety of different areas. So there are issues like that.

Especially here in Toronto, in some of the child abductions that have recently happened, the Toronto Police Service received calls from all kinds of different community groups offering assistance. As I said, “emergency response team” is now the catchphrase of this millennium. Everyone's got one or everyone's getting one. We really need to have some clarity on what they are and what their capabilities are.

The big thing is funding. We need to have some provincial guidelines on being able to provide operational support to the emergency services, and that includes funding.

The Acting Chair: Mr Rowland, and then Mr Crawford.

Mr Rowland: I would just like to add to what Shane was saying about volunteers. Just because someone shows up and says they're a volunteer, they don't necessarily fit into the same category that OVERT does, even though the word “volunteer” is in there. What he also mentioned about the particular group was that it took 35 to 45 minutes away from what somebody should have been doing that was very important to check on the qualifications for those people. That's what will happen.

I recall when I was in the military in Nova Scotia that there was a young girl missing in the woods, and a huge number of people volunteered to go and look for her. Regrettably, one of the volunteers fell off a cliff and diverted some of the resources that were supposed to be looking for the little girl to go look for him, a volunteer. It can be a good word, but it can also be a very bad word. Just because someone shows up and says they happen to be with an organization and a volunteer, if they don't have a classification as listed by the province, it takes resources away from the professionals and it can also eliminate that particular good word of the volunteers. It detracts from that as well.

The Acting Chair: In fact, I just recall that there was a person from Toronto who set up an organization to help the victims of 9/11. The monies and resources were never directed and she had no authority to do it. I knew the person. She had done this before in similar situations. I think it brings out a good point about some way of ensuring that the volunteers are not in the way of helping people, that they themselves don't become an obstruction because there is no funnelling or there is no way of

weeding through the bona fide volunteers and those who are just volunteers for the day. It's a good point.

Mr Crawford: In answer to your question about better practices, we have found Nova Scotia at times to have some interesting approaches that may be of some interest to your committee.

Also, from our standpoint, we all like to learn from our experiences, so it may be appropriate that you identify a few jurisdictions that have experienced a major emergency or whatever and just see what they have learned from it as well. You may be doing that, but that's just a suggestion, looking for best practices.

The Acting Chair: We are having the emergency measures officer from Nova Scotia next Monday. Mike Lester is coming in by teleconference.

Mr Pilon: I was just going to add that besides the ongoing work that we do with other police services, be it through the Ontario Association of Chiefs of Police, the Canadian Association of Chiefs of Police, the International Association of Chiefs of Police, we have, as a provincial organization, a long dialogue with the bordering states, and obviously the other provinces. Our experience is such that we rely strongly on the RCMP, being the contract provincial police for eight of the 10 provinces, and the territories as well. They have a lot of experience that we've relied upon to help ourselves, but we also are in partnerships with our other emergency service colleagues on an ongoing basis to review incidents, be it the Nova Scotia hurricane or the Swissair flight. We've also had ongoing dialogue with New York state and the Homeland Security folks and so on. I think probably each of us in our own areas of expertise do that sort of thing, but then collectively we get together and share those when we plan for the future, if that's of any assistance to you.

Ms Broten: Thank you. I just wanted to raise specifically with Mr Stasya the indication of a need for more general preparedness, even at a general citizenship level. The United Kingdom recently launched a large campaign where a brochure was sent to each household that would talk about emergency preparedness. It has received some criticism, and some praise, certainly, as to the effect it has had on the citizens of the country. I wondered if you had any comment about that program.

Mr Stasya: Yes. I've actually followed that a little bit with some interest. Public education is nothing new. It's been done at the federal level for quite some years through OCIPEP, their equivalent to our emergency management down here, the Office of Critical Infrastructure and Emergency Preparedness, which is public security and emergency preparedness now.

One has to be very careful. These things are good things. We have to impress upon Canadians and the Ontario public that emergency preparedness and management starts with them. However, we don't want to have a singular focus, say, just on terrorism or something like that, which is very high on some agendas across North America but may not be as high here—not that we should ignore it. We've got to impress upon them that it is their

responsibility to make sure they are prepared for something out of the ordinary.

Some of the media outlets have done that this week, in fact, in commemorating the great power failure of last year: "Do you have extra batteries in the house? Do you have food supplies for three days? Are you prepared to be self-contained with your drugs and medication? Don't expect emergency services to be able to support you in case of an emergency disaster for maybe a 72-hour period or some period after that."

So I think it's a good idea, and some of the onus of responsibility and the theme in our Canadian society is to focus on preparedness, starting with the individual, where we have to focus education on asking self-critical questions like, "Do we have our own fire plan?" We've gone through this for years and years but we let it die out, and not just the individual but the corporation.

There are some cultures and religious groups that actually practise emergency management as part of their cultural background. I think the Mennonites encourage all of their following to have six months of supplies in their food cupboards, not only for themselves but to take care of their neighbours. I'm not saying that we purport that everybody builds themselves a bunker to run into when a bomb goes off, but are you prepared and self-contained to manage yourself? I think that's the theme.

If we focused on an imminent event—boy, everybody had better run out and buy gas masks or level A Saratoga hammer suits—it would send a negative message and be overkill and probably do more harm than good.

But as to what the UK is doing, I think it's a good idea. I would be careful in how I framed the message. That would be my recommendation. But that's something we should go ahead and do all the time. Don't just have your fire drill after you've had your fire a couple of times; practise it regularly.

Mr Pilon: I just want, in support of what Greg is saying, to use the analogy of Y2K. At the risk of divulging this, I would say that most of my supplies from Y2K are now used up. I suspect many Canadians are in the same boat. Many people prepared for Y2K and, as Greg pointed out, if you can get them to prepare themselves for any eventuality in the same fashion as we did—we built up a pretty good momentum leading up to Y2K. I think many of us benefited from the experience of the planning we did and so on. Even on a personal level, people were prepared for the eventuality that something would happen, and obviously many were predicting different things would happen. Fortunately, it didn't occur, but nevertheless, people were prepared, and I think if we could somehow build that same momentum on an ongoing basis, we would be very successful.

1540

The Acting Chair: Sorry to interrupt one more time. Did anyone ever do an analysis after the fact, post-Y2K, to see whether that was a legitimate exercise, or was it just hype?

Mr Kormos: What do you think?

The Acting Chair: Has that ever been done? Is anyone aware?

Mr Kormos: Yes. All of North America realized it. I mean, the same person who spread that rumour ran that campaign to raise money for the 9/11 victims.

The Acting Chair: But I wonder if anybody's aware of any kind of post-Y2K to see whether there—because I think, in terms of being prepared, we've got to be worried about this type of preparedness, that with limited resources we don't get into this preparedness mode—like you said, the gas masks—because it's something that all of a sudden gets public attention, and we divert all our attention into that area and we're not prepared for the other eventuality. That's why I raise it.

Mr Pilon: I think there was a lot of debriefing that took place following Y2K, but it was more focused on, "Were we ready?" and "Could we have handled everything?" as opposed to, "Why did we get ready in the first place?" I'm not aware of an investigation or anything having taken place.

The Acting Chair: OK. I'll give it back to Ms Broten.

Ms Broten: Mr Crawford had his hand up.

Mr Crawford: I was just going to comment on the UK initiative as well. Of course, we've been involved in the prevention side, the preparedness side, from fire safety for a long time, and to broaden that out, from our standpoint, would be very good business, within reason. Certainly if we can provide that message to the public that they do need to take account for themselves, at least for the first few days or first few hours of an emergency—that tends to be where our emergency services are stressed the most, in that early period when we're identifying the emergency and trying to get a handle on what's happening and those types of things. If people have taken some responsibility for themselves to get us over that period, it would be very helpful. So those types of preparedness exercises would be good.

Ms Broten: Thank you. One very quick question to Deputy Commissioner Pilon. You made reference in your presentation to a number of cases, and perhaps an opinion that had been made available as to the common law. If that could be provided to us, for those of us who are the lawyers on the committee, we'd love to read some case law in that regard. So if it could be forwarded to the clerk, that would be helpful.

Mr Pilon: I will do that.

Mr Kormos: Chair, you don't gotta be a lawyer to read case law. As a matter of fact, it's often preferable that you're not.

The Acting Chair: OK. Mr Zimmer.

Mr Zimmer: This is a question designed to just get a sense of how intrusive—and don't take that word the wrong way—you think emergency powers should be. So the question is—and I'd start off with Commissioner Pilon and the others I canvassed this morning—if you're dealing in an emergency situation—you can think of any situation: a fire, a flood, or whatever—and you have a competent person, with no mental disability or physical infirmity, who's not a danger to others and is not a

potential danger to others, but that competent person, not a danger or a potential danger, says, "I don't want to move; I want to stay in the forest fire," do you think, as a matter of philosophy, that you ought to be able to remove that person or deal with them against their will, again assuming that they're competent, so they're informed and know what they're doing, and they're not a danger nor are they a potential danger to others?

Mr Pilon: Well, as I said when I began my comments earlier today, our focus is on public safety, and one of the tenets of our society is the charter and the freedoms that we all enjoy. If in fact that individual is not in some way impeding or otherwise affecting the business we're trying to undertake—that is, to resolve the issue, whatever it might be—then personally I don't believe that we should be forcing them out of that area if they are of sane mind and so on and so forth.

Mr Zimmer: Thank you, and I'd appreciate a response from the RCMP and the fire marshal and Emergency Medical Services.

Mr Van Doren: I'm consistent with the approach that Commissioner Pilon just advised. It's always a gut reaction or a quick instinct. When you talk about the word "competent," that's a decision you have to make on the spot and it's not one you can make lightly. If the emergency provider judges the person to be competent, that they're fully in control and they appreciate all the surroundings and what's happening, and if they make that conscious decision to remain within that danger area, then I think you have to respect that to a degree, if it's not affecting anybody else.

Mr Macintyre: Two points about that: Yes, I think they have a right to stay there, but as a system we also have a right to say, as my mom said, "You burned your bum; now you sit on the blister." You chose to stay, fine, but recognize the fact that we're not going to put our staff at risk to come and get you after you've made this informed decision.

Mr Crawford: That was where I was going. I think from a personal opinion, on the first level, you enjoy freedoms living here in Canada and Ontario, and that's fine. Sometimes the issue gets complicated. The individual may have a family. They may have children in the area, they may have seniors in the area, so who are they making that decision for, and those types of things? From a broad brush, certainly a competent individual, as the individual was defined, does have certain rights. The difficulty comes—and it is a judgment call made at the moment—when those other things come into play. Down the road, if the individual changes their mind, do they then expect the emergency responders to be putting themselves at risk to come and help them, to extract them from a difficult situation? So it is a very difficult question to answer.

Mr Zimmer: Perhaps a comment from OVERT.

Mr Harbinson: Again just focusing on our most recent experience, that being the Peterborough incident, I know there were a couple of situations where people were living in conditions that they really shouldn't have

been, and it was more for their health and safety. I know in one case it was eventually escalated through social services to public health to get the people out. I don't know how they did that exactly. I know initially they did not want to leave the residence, but eventually a public health inspector attended the scene and the residence was cleared.

Mr Zimmer: But on a philosophical level, not on the detail, do you think a competent person, not a danger or a potential danger, ought to be able to stay in the burning house?

Mr Harbinson: I think "competent" is open to interpretation, but essentially yes, again with the understanding—I think the big issue will be that you know that if you allow a number of people to do that, a certain percentage of them are going to come back into the service. They're going to be looking for help from the emergency services. I guarantee you that's going to happen. Mathematically, so many of them are going to call in saying, "Now I need help."

Mr Pilon: If I may, I spoke on a philosophical point of view earlier. When I just heard you repeat the situation, though, you mentioned somebody staying in a burning house, in which case I would feel an obligation, a duty in fact, to take that person out, which changes the scenario, in my view.

Mrs Sandals: Could we take another scenario while they're going around this scenario thing?

Mr Zimmer: Wait a second; let me finish. The sequel to that question is, what sorts of protections would each of you need in one of these situations where the competent, not-a-danger person disregards the advice and stays on? What protections do you, as institutions, need to protect yourselves?

Mr Pilon: I think we're in an age of litigation, as well as other things. Just as we see with doing a competent collision investigation, people will sue us because they don't think we've done that. So if people believe there's an obligation for us to move people out of there and we don't act on that, then obviously there's a liability issue and we need to be protected from that, if the determination is that it's the right thing to do to leave that person there. I would say the flip side is that if we feel the obligation to move that person, again, there could be some liability in someone not believing we had that authority and coming after us that way. So there needs to be that protection there as well.

1550

Mr Crawford: The question changed my answer as well when you made it a burning house, but you would have thought that. It did that because, from my standpoint, the risk changed dramatically. The first question posed to us, as I understood it, was of a competent individual who chose to remain in a hazardous area. It wasn't a 100% risk. It was making a decision to take a measured risk. I think that when the question changed a little bit there to change the risk, it became very clear to me that I would have had a different answer as well.

I think from a safeguards perspective, that would really be a legal issue, because it does come back to a

liability. Again, it would have to be on some type of risk-based approach. Are we talking about something that's going to happen, an event that may happen or an event that has a low probability? Those are the types of things we'd have to go back to, because it becomes a very grey area.

The Acting Chair: OK. We've got Mrs Sandals and then Mr Kormos.

There is one question, I think, that this raises. I'd give the analogy about the person falling off the cliff. If there is a situation where there is an emergency evacuation or emergency activity taking place, and if one individual or small group of individuals is causing a diversion of resources from the greater public good, is that where we need some kind of direction? That's what could happen. There could be a diversion because that small group or individual will not move or co-operate. Therefore, time and resources are spent toward that diversion. That's what I'd like the experts to think about. I don't have the answer myself.

Mrs Sandals: If I could just follow up on that last question, and then I had a totally different question I wanted to ask. If you had either the person in the burning house or a person whose competence is at question or is endangering others, then how intrusive should the ability be to evacuate? Does anybody want to comment on that one? Because then we're into a different situation from informed consent, low-risk. Now we're in high-risk, possibly not informed consent and possible danger to others.

Mr Crawford: I would think that if fire service encountered a person in a burning building, they would feel duty-bound to take them out. That is just part of what they've been doing for years and years. Unequivocally, I think the risk there is an obvious risk; it's an immediate risk. Something needs to be dealt with immediately, and that's what they would see their role to be and that's what we would see their role to be.

Mr McKinnon: I think what we need to realize is that when an evacuation order is given, typically it's based on research, working with the experts and needing to have something happen very quickly. Not just the fire, but if we have certain chemicals involved and that information is given, firefighters may well decide, in that same situation, that they need to take immediate action to move them back because there are many of them. In your example, they will be burnt by other things, and we will have to deal with the consequences of that if we don't remove them at that same time. In fact, it would fall under the definition of a rescue because if they decided not to leave, we're going to be back in there one way or another getting them out. We're likely to take them out initially.

Mr Stasya: I was just going to remark, again, that the police have guidelines that are well put in law, the Police Services Act and stuff like that: preservation of life; protection of property; elimination of the event or the incident causing the event. But it's a judgment call. If you take the case of the forest fire impinging on a

burning house, there are other statutes that can assist us in our decision, such as the Mental Health Act. Nobody walks around with a badge of competency in every situation.

However, if you switch that from hot to cold, say somebody in an ice storm who doesn't want to leave their house that doesn't have power, are they a threat? What are the resources that they would need? Is there evidence that they're going to be a threat to anybody else? In that case, we just might back away.

We have some recent examples of that during the quarantine regulations from SARS, and this was taken differently by police in different jurisdictions. In Toronto, we took a very soft approach to enforcement of quarantine and isolation orders. If a person didn't want to comply and said, "I'm not coming out of the house to do this," or stuff like that, "Well, good. Stay in your house. You've just quarantined yourself."

There are different ways of playing that, but when you're reacting to an imminent event—ie, a fire or something coming—and somebody says, "I'm not going," then we might just assume that the person is not competent, assuming there are officer safety issues that we've judged in the matter as well. What we don't want to do is, through use of force, escalate an event for somebody who refuses to come out of their house because they don't have any power, and then we get into an armed standoff. That definitely would suck away resources and raise the potential level of violence.

So from the policing perspective, there's a whole bunch of use-of-force and other factors that would impinge upon our judgment.

Mr Macintyre: From an EMS perspective, this is an issue we look at fairly regularly, because there are situations where we don't have ambulances to send to calls. In a large-scale situation, we're going to be faced with deciding on which calls we're just not going to go, period: "I'm sorry, you can call a cab; we're not coming." Maybe in the kind of situation where a person who is mentally competent says, "I'm not going to leave because of the forest fire," the system will decide, "Fine, you've decided not to go. Call us again if you want, but we're not coming."

Mrs Sandals: While you were making your presentations, I was trying to listen for instances where you talked about existing legislation that in some way or another had sort of got in your way. I think I heard three categories of concern. One was around disclosure of information, where you were concerned that in one way or another the lack of disclosure and legislative authority to disclose information perhaps endangered the emergency worker. You can talk about that better, but you talked about the need to require disclosure of information.

Another instance was around the labour legislation in various ways, where it may get in the way of handling certain emergency situations. The Ministry of Labour has actually raised this as well: Should we be considering overrides on labour legislation?

The third one is regulations around who is authorized to do something. I think the example we heard was having to go back to the Legislature to change the legislation so that a firefighter could drive an ambulance, that sort of thing. You actually had to go back to the Legislature to get the legislation changed. I'm thinking that if we were to have an avian flu outbreak—we hope we don't—you might have to override the legislation to allow a veterinarian from BC who has experience to temporarily practise in Ontario. This is around various regulations.

I guess the question I would like you to comment on, depending on your particular concerns, is, would it be useful to have emergency powers that allow temporary overrides of other legislation or regulations in the areas you raised, which were around disclosure of information, labour legislation and other regulations that define who does what?

Mr Macintyre: I'll talk about the information exchanges. It is very important that emergency services workers—fire, EMS, police—have that information. We need to be able to find out fairly quickly, does this patient have this syndrome? Quite frankly, that's not just in a disaster. If we take a patient to the hospital, we need to know so we can tell the crews if this guy has bacterial meningitis. Unfortunately, sometimes we don't hear for two or three days, and they should have been taking the prophylaxis right away. That's an issue today even in non-disaster modes. We need to have the legislation and power that says that as soon as you identify it, here's the number to call at EMS, or police or fire—"You picked up this patient at this address. They do have syndrome X"—so that we can protect our staff.

1600

Mrs Sandals: Does anybody else have any comments?

Mr Pilon: I was just going to reinforce that issue. I raised the disclosure issue. It is for the protection of our employees. I know there is some legislation in place that helps in terms of certain instances. Mr Garfield Dunlop would be well aware of that. But in an emergency, there still is not the ability to share that information currently. Perhaps in that circumstance, it would be an indicator that some type of override may be appropriate.

But I think that overrides have to be very carefully dealt with when it comes to that authority and who has the authority and how long the override is. It would have to be thought through very carefully. As we work within a legislative framework, it's not often that you would see legislation that is in place for a very good reason be suspended for any reason at all. I guess all I'm saying is that if you're considering that type of authority, it would have to be very carefully crafted, I would suggest.

Mrs Sandals: That's one of the things that, when we looked at the legislation from other provinces, was often seen in legislation. I thought it was interesting that a couple of you raised that as something you had struggled with in past emergencies: disclosure of information. You raised the instance of protecting your employees, but it

also might be disclosure of information that allows you to manage the emergency. That would be another possibility. I would think that fire, chemical and biohazards are disclosure issues.

Mr Crawford: It would be very beneficial to streamline some processes that we would need to deal with, obviously in the context that there needs to be checks and balances. The reason for us doing that needs to be focused on the emergency and trying to deal with the emergency and however that would work out, whether it would be beneficial.

Mrs Sandals: What about the instance you raised where you actually had to go back to the Legislature in order to license people to drive things? While it would be a huge issue in terms of managing the emergency, it's probably, in the general scheme of things, not a terribly intrusive override on the legislation of the province. It may be time-consuming, depending on whether or not the Legislature happens to be sitting.

Mr Crawford: In that case, events allowed us to have a bit of time to make the regulatory change. But events could have gone differently where we really had to react a lot quicker. When I say "time allowed," we did have a few days so the change was made. But if the events had gone differently, it would have been very beneficial to be able to deal with that on a more urgent basis.

Mrs Sandals: Any other comments? OVERT?

Mr Harbinson: The only issue I would have would be WSIB coverage for volunteers. During SARS it was an issue that was brought to the Ministry of Health: the fact that none of the volunteers in the province had WSIB coverage yet were providing a phenomenal amount of volunteer hours working through local public health doing quarantine deliveries, working at local community hospitals helping with assessments and security. That's an issue that we also see on a regular basis because we don't work for any particular ministry. We work across a broad spectrum. Having some level of coverage for the volunteers I think is critical, especially if we're going to be incorporating volunteers into something like the SARS of the future.

Mrs Sandals: The issue here might be a broader issue, which is, in an emergency, how do we protect volunteer workers rather than specifically—

Mr Harbinson: Of course, the other problem you run into is that local municipalities have emergencies that don't apply to the province. I'll use Port Hope as an example. Port Hope has had two incidents this year where they required, in our case, I believe 50 and 70 volunteers to assist them, because they're a small municipality and they don't have the surge capacity to deal with major incidents. So in those particular cases, although from a provincial perspective it wasn't an emergency, locally it was an emergency and, again, the same problem happens: Those volunteers do not have WSIB coverage.

Mrs Sandals: Barry, you were—

Mr McKinnon: We did minor research, so it does need to be furthered, but in those instances, it's my

understanding that MNR and police may have the ability to appoint them and fall under the umbrella of WSIB. I don't know the details of it but it was one we looked at. There are specific qualifiers before they go ahead and do that. There are obvious concerns about the training that's been provided and the competency, so there's some due diligence to follow, but I think MNR would be the one you would go back to initially. I'm not just sure how that works; I just raise it.

Mr Pilon: We do a lot of work with volunteers besides our auxiliary unit. With our volunteers, our policy has always been that we essentially take all the details of the volunteers and make sure that we consider them to be competent volunteers. It was always our belief that the WSIB coverage would be there if they worked under the guidance of one of our officers. I'm not certain if that's the current view but that's the way it had been previously.

Mrs Sandals: So there's probably a grey area there with respect to the particular WSIB issue.

Mr Pilon: There may be.

Mr Harbinson: During SARS, it was quite clear that there was no WSIB coverage—quite clear—and that there was nothing that could be done at the time to get WSIB coverage.

The Acting Chair: Mr Kormos?

Mr Kormos: I know this issue arose around volunteer firefighters. Municipalities were concerned, because it meant municipalities paying WSIB premiums for those volunteer firefighters. I have already indicated I endorse the proposition, and not just during emergencies. Why should a volunteer firefighter or a volunteer with any of these front-line emergency response people have that benefit only when they're in a state of emergency? I say no. We've got to resolve that.

Of course, the floodgates argument is going to be made—and it's a legitimate argument—saying, "What about the volunteer who is coaching a baseball team?" But, quite frankly, what about the volunteer coaching a baseball team, who is giving of his or her time, who suffers an injury that takes them off their payroll? Do we leave those people out to hang and dry?

I should ask you, Chair, to ask legislative research, because I'm not going to try to recount the issue around WSIB and volunteer firefighters off the top of my head that occurred over the last few years. Could we take a look at—and there was a response to that.

I also appreciate Commissioner Pilon's cautious approach—I suppose it's a matter of salary, isn't it, among other things?—to this concept of legislative override. Again, I refer you to the 1981 white paper—and I'm paraphrasing now—where McMurtry, Solicitor General and justice minister, as he was then, said, "Look, one building on fire or 100 buildings on fire, the response personnel need the same powers, whether it's one or whether it's 100, and there shouldn't be new powers because there are 100 as compared to it being one." So I think there have been some caveats.

Also, Mr Crawford very importantly mentioned that it was a regulatory change that was necessary with respect to the capacity to drive ambulances. I would caution members of the committee, with all due respect, that a whole lot of what is being contemplated doesn't involve legislation; it involves either policy or regulatory change.

I'm concerned about the discussion that took place around evacuation. Somebody who is a better Catholic or a better lawyer than I am will correct me if I've mispronounced this phrase, but I fear we've descended into *reductio ad absurdum*.

Interjection.

Mr Kormos: There you go. Are you a better Catholic than I am? Mr Zimmer having corrected my pronunciation.

The Acting Chair: He's a diction Catholic.

Mr Kormos: We're talking about these bizarre scenarios: the house on fire and so on. You see, that which isn't prohibited is permitted. Did I get that one right, Ms Broten? So if something isn't prohibited, you're allowed to do it, whether you're a police officer, a firefighter, a paramedic or Jane or Joe Citizen.

1610

Similarly—and I appreciate your comments about the litigious world out there, but I'm hard-pressed—look, cops and firefighters and paramedics do all sorts of things every day where they rely upon their training, their guts, their instinct, their compassion, many of which, I'm sure, at the end of the day, in a very technical way, constitute trespass or assault and battery, any number of things. It's absurd. I can't imagine any court in this country, in this province—this isn't Tennessee—entertaining those kinds of lawsuits; again, with all due respect to what you're saying. So I think we've got to be very careful.

Perhaps legislative research—because, first of all, there are the references that the commissioner made to various case law, various decisions, including the Supreme Court of Canada, which Ms Broten has asked for and you've been asked for already. But perhaps we could have a little bit of a review of what the 1981 McMurtry white paper talked about when they talked about the common law powers. When you read that, he was loath to start codifying them, because once you start codifying them, you bring grief upon yourself. You cause problems where problems never existed. So the only thing that's changed since this white paper was the case law around the Charter of Rights and Freedoms. Mr Zimmer's a better Catholic than I am; perhaps he's a better lawyer too. I don't know whether he'd be aware of any cases decided under the Charter of Rights and Freedoms that would impact on any of the capacities that we expect firefighters and others to have.

Look, think about this from a practical point of view. If you've got a neighbourhood, never mind a community, that has to be evacuated, the last thing cops, firefighters, paramedics have to do is get involved with one person. I mean, there's some utility involved there. They're interested in moving the maximum number of people in the

shortest period of time and, quite frankly, if some dough-head wants to remain behind, well, too bad, so sad.

It's a simple matter, again, of numbers. You're not going to start running to justices of the peace. You're really going to go in and grab that person and pull him out and think about how you're going to clean up the mess after the fact, right? You'll design something. Maybe you were apprehending someone to prevent a breach of the peace. That's never been done by police; I understand that. No. But you know, it's that historic power to arrest without laying a charge, where the police are apprehending and preventing a breach of the peace. It's sort of the ways and means act of the policing community, and I understand. God bless.

That's why legislative research perhaps, expanding a little bit on what was included in the section on special powers—because I'm worried that we're creating problems where problems don't exist, and we're also suggesting somehow that—there's not a firefighter that I know, and I know a lot of them, like everybody here, not a cop that I know and not a paramedic that I know who doesn't, at the end of the day, use their commitment to protecting people and property in the best way they can. They worry about this stuff, quite frankly, after the fact; sometimes regrettably, but they tend to worry about it after the fact.

We shouldn't be creating a litigation chill in terms of what we're talking about here. In other words, we shouldn't be saying things or reaching conclusions that cause people or give people reason to be fearful of litigation, should they be doing the right thing. Maybe what we need—Mr Zimmer, I think, was getting close to it; I think he was thinking about it—is this whole concept of good Samaritan laws. You were talking about that as well, an immunity for people who act, in the performance of their duty, in good faith in the course of protecting life or property. That might address the litigation fear, because Lord knows, we're not talking about any breaches of criminal law. That might address the potential litigation fear, although I suggest that's even premature, unless and until you see courts somehow drift into that wacky turf.

The Acting Chair: Mr Pilon wanted to comment on something you said.

Mr Kormos: OK, by all means. I appreciate that was a comment, but I wanted to make that comment now in response to, as I say, my concern about the *reductio*.

Mr Zimmer: *Reductio*.

Mr Kormos: Well, can't I say "*reductio*"? It's an eastern European accent. *Reductio ad absurdum*.

The Acting Chair: By the way, someone—talk about *absurdum*—has left their keys.

Mr Kormos: What are they to?

The Acting Chair: They're to a room in here of someone. They're to rooms in this building. I recognize them.

Mr Pilon: I just wanted to comment quickly. I'll leave the issue of whether or not a breach of the peace would constitute a rationale for doing something under certain

circumstances. If the situation warrants it, as Mr Kormos points out, I think our understanding of the common law is that we would have the authority to do it. I think I made that comment in the opening comments. But I went a little further and said that if it was specifically authorized by law, it might be easier to deal with. It might avoid that grey area.

I would just reinforce—and I think we all do rely on our common sense; hopefully we all possess that—that if it's a situation which warrants evacuation, and we have someone who isn't willing to evacuate for some reason, and we feel it's necessary, we will evacuate.

Mr Zimmer: Mr Chair, if I could just be helpful: On page 27 of the memorandum prepared on August 10 by Margaret Drent, the research officer—and that's the discussion paper on proposed emergency planning legislation, dated 1981—there's a quote from an Ontario Court of Appeal decision that addresses this. I'd just like to read that into the record. It's just a short paragraph.

The Acting Chair: OK. Go ahead.

Mr Zimmer: It's quoting a justice of the Ontario Court of Appeal.

"Police forces exist in municipal, provincial, and federal jurisdictions to exercise powers designed to promote the order, safety, health, morals, and general welfare of society. It is not only impossible but inadvisable to attempt to frame a definition which will set definite limits to the powers and duties of police officers appointed to carry out the powers of the state in relation to individuals who come within its jurisdiction and protection. The duties imposed on them by statute are by no means exhaustive. It is infinitely better that the courts should decide as each case arises, whether having regard to the necessities of the case and the safeguards required in the public interest, the police are under a legal duty in the particular circumstances."

That was the argument: It should be left as a broader power rather than a codified power because you can't anticipate every possible situation. Then you get into the whole exercise of splitting hairs: whether you have the authority or you don't have the authority, rather than a broader authority for which you're held accountable, after the event, of course.

Mr Stasyna: Just a comment on that. That's particularly why we have phrases such as "reasonable grounds," "exigencies of the service" and "good faith." Everything in Ontario, with respect to police and just about everything else, is subject to review from one organization to another.

As I was just discussing with Mr Pilon, we'll do what needs to be done in good faith. If we have to pull somebody out of a burning house whom we may perceive as not competent but who really is, then we will act to preserve life and protect property.

The Acting Chair: If I may, though, the question this poses is really Dr Young's question to all of us. He has looked at legislation and statutes right across this province and this continent. He has said that if you look at all the powers or legislative authorities other jurisdictions

have, we have the least. We have jurisdiction to basically act in one or two areas. In all other jurisdictions, they have put regulations, legislation and policies in place that give specific direction to their emergency service personnel, whether it be police or fire, to take certain actions.

The question I ask is, why is Ontario not undertaking the same legislative actions that all other jurisdictions have, in North America anyway?

Mr Kormos: Better legislators?

The Acting Chair: I don't know. I think that's really the hub of the question facing this committee. If you look at Dr Young's enumeration there of the different provinces and so forth, there's only one area where Ontario has taken action, and that's to implement emergency plans. On regulate or prohibit travel, we have nothing. Evacuate: really no powers. Requisition, use or destroy property: nothing. Mandatory recruitment: no legislative authority. Establish emergency facilities: no legislative authority. Procure and distribute necessary goods and services: no legislative authority.

1620

Sometimes the impression I get is like when we had someone from MNR here, and they had the impression they had these powers, and then when I asked him where he got the powers from, he said, "Well, we have great co-operation with municipal authorities."

So that is, I think, the crux of the issue we are faced with as a committee. We're essentially coming up blank in terms of restoring necessary facilities, of authorized paid leaves of absence, of requiring the disclosure of information like health information, of entry without warrant—we don't have that, while almost every other jurisdiction does. Anyway, I think that is the difficult question for us to answer as a committee and for us to deal with.

Mr Zimmer: In that regard, I was going to give this to you at the end of the meeting, but I have here a book prepared by the Council of State Governments in the United States. It's an analysis of the 50 states and their emergency powers legislation, what each has and how it derives and so on. This might be something the committee might want to have a look at just to inform itself.

The Acting Chair: You've got one copy there?

Mr Zimmer: I've ordered another 20 or 30 copies, but I just have the one here.

The Acting Chair: OK. Ms Broten?

Ms Broten: I guess I'd just like to pose the question the committee is looking at in another way, and that is, are we deficient in those areas? Dr Young has put that forward as a suggestion, and even when he was before this committee—and we've met with other folks, and many of those around the table today have really, in some ways, indicated that some powers do exist, but not within the context of one singular piece of legislation. The question that we're posing to all of the witnesses, I guess, is, do we need additional powers? Do we need clarification of those powers? Do we need a more concrete singular list of those powers? What are we facing as a

province? So I think it's a broader question in many ways than simply an indication that we are deficient, and do we need them? I think we need to pose, first of all, are we? Do we need them and are they missing?

Mr Kormos: Or in fact is the first problem to be addressed one of gross underfunding of firefighting services, of police services and of emergency medical response services? We can have all the most elaborate, fine, beautiful legislative structure in the world, but if these folks don't have the tools to do their job and they don't have the personpower, then we're spitting in the wind and it's all window dressing. So let's start with first things first, like funding these people.

The Acting Chair: But again, all the funding in the world is going to do nothing about entry without warrant.

Mr Kormos: And entry without warrant is going to mean diddly-squat if the communities I come from, like the communities you come from, don't have enough firefighters and don't have enough equipment for those firefighters to work with or don't have enough cops so that we've got more than one cruiser on patrol on a midnight shift in the whole city of Welland. If the bad guys only knew that—

The Acting Chair: But again, the problem was raised by Dr Young, I think it was, who said it's not a matter of resources. In some cases, I think it is resources, no doubt about that; I'm just saying that in some cases it's a matter of not only having certain legislative authorities, but then the second part of that is also the coordination between different parts of government.

We heard that example about the inability of some ministries of government or their agents to do anything about building a dike on a farmer's land without being charged with trespassing—and they would actually be charged with that. On the other hand, we heard another ministry come before us, the Ministry of the Environment, and say, "Well, we can trespass and we can build the dike under the statutory powers given to the Minister of the Environment."

So I think part of this committee's work is maybe to say we don't necessarily need new powers, but we have to have the coordination of existing legislative powers that are already there in certain ministries, but another ministry isn't aware they exist. That's one case that was brought before us.

Mr Pilon?

Mr Pilon: It may be that some of the powers that exist—and I'll just use police as the example—do not exist for others to use. That's always another issue to consider.

The Acting Chair: If you could just elaborate on that.

Mr Pilon: For example, police officers are authorized to direct traffic. Going back to the point raised earlier about driving vehicles, the police, in the Highway Traffic

Act, are authorized essentially to drive anything in an emergency. But firefighters didn't have that authority, so they had to go and seek it specifically. You may find that this piece of legislation is valid for the Ministry of the Environment but perhaps not valid for others. That may be just another issue that you would want to explore.

The Acting Chair: I think that's maybe where we need to get advice and direction from the experts in your field, to say, "Here are some of the gaps" where, through regulation, that kind of change could be recommended to get rid of that oversight, which would enable the firefighters to commandeer an emergency vehicle, I think it was, or vice versa. I don't think that's an extension—that's not an increasing of arbitrary powers. To me, it's more of a coordination of existing powers that we need to do as the government, perhaps.

Mr Pilon: That's fair.

I just wanted to respond to Mr Kormos's points, if I could. Funding is always an issue, so I won't go down that road. But in terms of the need for legislation, I'm of the view that there is some policy framework that the government can provide, and I think has provided, with the act that allows us collectively as emergency services to, if you will, pool those authorities that we have to do the job when necessary. I think that's one of the keys, making sure that the response is as integrated as it can be. The other side of that is, you may choose, as the Legislature of this province, to have a legislated framework within which we operate. I would suggest to you that it already exists, but you may want to change that.

From my perspective, I think the focus may not necessarily be on creating new powers or new legislation, but making sure that we all are aware of and can use the appropriate legislation as it exists today. I would just offer that to the committee.

The Acting Chair: I guess that's it, unless there are any more questions or comments.

Mr Zimmer: I want to turn this in.

The Acting Chair: That would be very helpful.

It's been very informative. I think you've offered sage advice, and I appreciate your candour. I think we've all benefited by your being here today. On behalf of all members of the committee and the people of Ontario, I want to thank you all for taking time to offer your advice and direction to this committee. Thank you very much for being here today.

We're going to adjourn until tomorrow at 9 am in the same room. We will have available the updated list of presenters over the next couple of days and next week also. If members of the committee have other names or organizations, we're still open to suggestions. We stand adjourned until tomorrow at 9 am.

The committee adjourned at 1628.

CONTENTS

Monday 16 August 2004

Emergency Management Statutes Review: Essential Services Panel	JP-77
Ontario Provincial Police.....	JP-77
Mr Maurice Pilon	
Office of the Fire Marshal Ontario	JP-79
Mr Doug Crawford	
Mr Barry McKinnon	
Royal Canadian Mounted Police	JP-81
Mr Marty Van Doren	
Ontario Association of Chiefs of Police	JP-82
Mr Greg Stasyna	
Ontario Volunteer Emergency Response Team	JP-83
Mr Shane Harbinson	
Mr Steve Rowland	
Toronto Emergency Medical Services	JP-84
Mr Peter Macintyre	

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Première session, 38^e législature

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**Standing committee on
justice policy**

**Comité permanent
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY****COMITÉ PERMANENT
DE LA JUSTICE**

Tuesday 17 August 2004

Mardi 17 août 2004

*The committee met at 0905 in room 228.***EMERGENCY MANAGEMENT
STATUTES REVIEW**

The Acting Chair (Mr Mike Colle): Good morning. I call the standing committee on justice policy to order. I want to first of all thank everybody for being here. As you know, members of the committee and members of the expert panel presenters today, the mandate of this committee is to review all Ontario statutes for the purpose of improving Ontario's emergency readiness and preparedness. Before we begin, I would like to again thank all the members of, as we call it, the private sector panel for taking time in the summer from your busy schedule and making yourselves available.

You'll find that this morning's session is a little unusual. I know that some of the old pros, like Mark Yakabuski, have been before us many times wearing other hats. This is a bit more of an exchange of ideas and exchange of experiences. The format allows for suggestions and cross-fertilization of information, questions and comments. We hope you'll take advantage of this format, because we're looking for your direct input as we try to improve Ontario statutes and review them.

Mrs Liz Sandals (Guelph-Wellington): If I could raise a point of order just before we begin, Mr Chair: Yesterday you had asked the committee members if we had any suggestions for other groups that should be called, but members of the committee don't actually have the list of people who are confirmed, the list of people we're contacting or what the schedule for that is. I was wondering if during the morning we could perhaps get the staff to supply that information, and then perhaps before we break for lunch we could come back and give the committee an opportunity to look at that schedule and see if there are any holes that we think we should be filling in.

The Acting Chair: That will be made available, I'm sure, by the end of the morning session.

Just to review the format, what we're going to do is allow 10 minutes, or if you want to take less than 10 minutes, for initial presentation by the private sector presenters where you could give an overview of what your sector's thoughts are on emergency preparedness. That will be followed by 10 minutes per caucus of questions or comments. That will be followed by an

open-ended session where private sector presenters can ask questions, continue to make comments or where members of the Legislature can ask questions of you or vice versa. That will go on until 12 noon. So it's essentially in three segments.

If you want to say something, for the purpose of Hansard, as this is all recorded verbatim in the legislative diary, before you speak, could you put up your hand or indicate to me, the Chair, that you'd like to speak. Therefore we could have your name beside your comments in Hansard. That's the only proviso I ask you to consider.

We'll begin today with 10-minute presentations.

0910**INSURANCE BUREAU OF CANADA**

The Acting Chair: First of all we have the Insurance Bureau of Canada, Mark Yakabuski, vice-president, Ontario division.

Mr Mark Yakabuski: It's a pleasure to appear before this and other committees of the Legislature. I want to commend you for undertaking this review of statutes related to emergency management in Ontario. I think the last few weeks have reminded us all of the vulnerability of Ontario and many other parts of the country to disasters. Our ability to respond to those is often a measure of our ability to respond to the people who depend on us, whether as our constituents, or as our policyholders in the case of insurers.

I want to tell you that the Insurance Bureau of Canada is the national trade association representing automobile, home and business insurers. As such, our member companies are very deeply involved first and foremost in the task of emergency response and recovery.

The most recent example of that is Peterborough. The insurance industry has received almost 5,000 claims to date regarding the July 15 flood in Peterborough. We estimate at this time that the total payouts from insurers alone in Peterborough will exceed \$86 million. The reality of the matter is that insurers will be the largest single contributor by far to getting Peterborough and its citizens back on their feet. The industry has also experienced a similar emergency situation with flash flooding recently in Edmonton, where we expect the claims payout to be well in excess of \$100 million.

Our direct experience in responding to emergencies across the country and here in Ontario—I needn't remind

us all of the January 1998 ice storm, where insurers paid out over \$300 million here in Ontario alone to respond to that crisis. We have a lot of experience dealing with locally based, highly coordinated emergency response plans.

In fact, right after the Mississauga train derailment of 1979, the insurance industry across the country developed what we call our claims emergency response program. This is a program with local representatives in every major region of the country, where local emergency plans are tied with fire, police etc and are connected to the national insurance resources of our industry.

It's that kind of incident management approach which has now been adopted by Emergency Management Ontario and many other emergency organizations here in this country and beyond. We fully endorse this much more comprehensive approach to emergency response and preparedness.

IBC also happens to sit on the city of Toronto's emergency planning committee. We have a seat on that committee, should that ever be required in responding to an emergency.

We have also participated with Emergency Management Ontario and the city of Toronto in designing and participating in a number of mock disasters. What's very important when you have emergency plans is that they be periodically tested to see how responsive they would be in a real situation. That periodic testing is very important to keep people on the edge and on their toes, so to speak.

I've talked a little bit about emergency response and recovery. Obviously, these are critical. We need to respond to an emergency. But quite honestly, we often forget the importance of prevention in the first place. Our long-term goal ought to be to mitigate the size and damage related to natural disasters. We cannot avoid natural disasters entirely, but we can substantially mitigate the damage they cause.

One of the things I would bring to your attention is a feature of American disaster planning that has never been adopted in Canada. In the United States—and you will see that in the aftermath of Hurricane Charley, just as it took place after Hurricane Andrew in 1992 and any major disaster that hits the United States—whatever money they pay out federally and provincially as a result of responding to a disaster, at least 15% of their recovery payout will be automatically dedicated to prevention measures to avoid a similar type of disaster hitting that community in the future. There's not a political debate about it; it's something that is done in the aftermath of a disaster.

We have actually been saying for some time—I don't want to take up too much of your time this morning, Mr Chairman, but we made a presentation to the federal government a number of years ago suggesting that this component of disaster planning ought to be looked at here in Canada and in Ontario and everywhere else. But frankly, the response has been rather disappointing.

I will end by simply saying that we have to take more seriously the danger of climate change. It is the single

biggest thing that will affect us—our communities—with respect to disasters we will face. Weather patterns are changing. There are a number of factors at work. Climate change is almost certainly among them, and unless we begin to take that issue more seriously, we will be paying out lots of money and we will be putting people in harm's way, which we might not want to do.

I will leave it at that, Mr Chairman, and I look forward to the discussion going forward.

GREATER TORONTO AIRPORTS AUTHORITY

The Acting Chair: The next presenter, from the Greater Toronto Airports Authority, is Keith Medenblik, government and corporate strategic manager.

Mr Keith Medenblik: Thank you for the opportunity to appear before the committee. I have with me today Mr Jim Bertram, our director of public safety, and Scott Smith, general manager of our operations control centre, the two major divisions that deal with emergency response at the airport.

As a major component of the province's transportation infrastructure, the GTAA takes emergency planning very seriously, and we appreciate the opportunity to be here today to entertain your questions and to learn more about the process you're going through to deal with emergency management at the provincial level.

As you know, we have extensive emergency response procedures in place at the airport, and we'd be more than happy to assist the province in developing theirs and to take into consideration how we can work together.

Scott has a few comments he'd like to make.

Mr Scott Smith: One of my primary responsibilities at the airport is emergency planning. We have a division that maintains our disaster—

The Acting Chair: Scott, could you please speak into the microphone a little bit closer.

Mr Smith: Sorry. They're dedicated to ensuring that our disaster plans are up to date and as accurate as possible.

With the timing of the invitation we had to this committee, we are putting together a couple of points that we will forward to the clerk when they're completed. It just didn't get done in time. We will have a formal submission at that time, hopefully by the end of the week.

There were a couple of points that we did want to bring to the panel. Recently, during the SARS incident, an interesting impact of the Quarantine Act, which is federal legislation, came to light. Of course we have Health Canada on-site at the airport, and during the SARS incident one of the holes in that act came to light. The Quarantine Act only applies to the first point of entry, and Toronto was often second, third or fourth in line after the visitor had arrived, and our quarantine officers at the airport under Health Canada had no jurisdiction over those people. If there were issues of assessment, they were just that. It was just a recommendation from Health Canada. Between all the different

parties, nobody really wanted to grab hold of that issue, and we found that a great hole.

That's something we're certainly looking forward to trying to fill in the future. Hopefully, this forum is one step toward that. There are items like that, which we will submit to you, that probably will be a little more specific than most but that we're certainly looking forward to.

0920

The Acting Chair: It might be very helpful at this point if you could just explain that a bit further in terms of a second or third point of entry and the lack of jurisdiction or lack of any kind of authority to do anything about quarantine.

Mr Smith: Certainly. We have Health Canada on-site as federal jurisdiction on the Quarantine Act, and the Quarantine Act is fairly specific in the powers that quarantine officers have. For instance, when passengers came from Asia to Vancouver and then picked up a connecting flight to Toronto, if they exhibited some sort of symptoms of one of the infectious diseases we were looking for—SARS, in particular—Health Canada representatives, the quarantine officers at the airport, had no real jurisdiction. All they could do was recommend to the passengers that they not fly, that they not continue, that they go to the hospital.

The Acting Chair: Didn't they have that authority in Vancouver?

Mr Smith: Well, if they didn't exhibit symptoms or did not get picked up in Vancouver and moved on throughout the country—air travel being rather unique in that in three or four hours you're a couple of hundred, or a couple of thousand, miles away—that was a specific incident we saw that was a little troubling for us.

Another one, if I may: Within the auspices of US emergency preparedness, they have organizations like the International Association of Emergency Management and FEMA, which everybody is very familiar with. These are accredited; there are educational institutions that develop courses; there's some standardization. We don't really have anything like that in Canada, and we find it to be a bit of a hole in the whole process that we don't have any standardization from different levels of government and the qualifications of those who are involved. Like I said, the International Association of Emergency Management within the US is a well-established and accredited association. Something similar to that in Canada or Ontario would certainly be a benefit.

Mr Jim Bertram: Good morning and, to echo my colleagues, thank you very much for the opportunity to address you.

I am more interested in your process. We're a community of about 30,000 citizens, I'll call them, at the airport, with tourist activity of 27 million. That is a fair amount of activity between two major centres, being Mississauga and Toronto, and it's federal jurisdiction from a land point of view, by and large governed by federal regulation and legislation. So I am more interested in seeing how we can fit into your plans.

I had the dubious pleasure of being one of the on-scene commanders at the Mississauga train derailment,

when emergency planning was in its infancy, and have been very interested in it ever since as a result. We did send our expertise down to the Swissair disaster, and although we're talking about natural disasters here, my focus is on natural disasters, criminal activity and so on. So I would like to see where we can fit in and assist the province and the municipalities in a larger disaster management plan, whether it's an air crash or some criminal activity.

We do have a particular school of expertise that is highly trained and honed to respond very quickly, and if the province or the municipalities can take advantage of that, then that's where we would like to see if we can fit in.

I'd be happy to answer any questions you do have.

The Acting Speaker: Thank you very much to the Greater Toronto Airports Authority.

CANADIAN BANKERS ASSOCIATION

The Acting Speaker: Next is the Canadian Bankers Association. We have Ron Baird, the director of banking operations, and Rex Pattison, Canadian Bankers Association committee and chair of event management and coordination specialist group, Bank of Nova Scotia. Would you please identify yourselves?

Mr Rex Pattison: Thank you for the opportunity to meet with the committee. My name is Rex Pattison. I'm with the Bank of Nova Scotia, but I'm here in my capacity today as chairman of the event management and coordination specialist group of the Canadian Bankers Association. Also with me today is Ron Baird, director of operations for the CBA.

I'd like to commend the government and the participants of this committee for undertaking the challenge of reviewing and possibly developing new or revised emergency management statutes. I understand we've been allocated five minutes. In that time, I'd like to explore with you how the protocols used by our industry have evolved—

The Acting Speaker: Rex, you have up to 10 minutes and then there'll be time later on to expand.

Mr Pattison: OK. Thank you.

We're going to cover how the protocols in our industry have evolved—I don't think many people think of bankers in this context; how we've managed to encourage co-operation in event management with a highly competitive industry; generally, how our protocols are used during an event; the benefits of having well-defined protocols; and finally, some suggestions for consideration by the committee as you move forward.

Starting as early as the late 1980s, the banking industry began to recognize a need for formal co-operation between institutions as it related to, at that time, disaster recovery planning. What served to crystallize this even more was the planning required to address issues surrounding the year 2000 rollover. This focused the industry on the need to share information and work together during an event, be it perceived or real.

Post-Y2K, two groups have evolved within our industry to address event management. They are the event management and coordination specialist group, EMCSG, which addresses physical threats, and the Canadian financial institutions computer incident response team, CFI-CIRT, which deals with cyber events. Both use the same communications protocol.

The Canadian Bankers Association recognizes that each of the banks has developed highly competitive products and that commercially sensitive information is proprietary to the banks. However, early in the development of the protocols, it was recognized that having the CBA as a single point of contact to coordinate the exchange of information between banks and the other industry partners or our regulators would help to speed the interchange between all parties and provide consistency.

Now I'd like to briefly describe our communications protocols, which establish a process for identifying, assessing and managing an event:

—Either the CBA or a member bank may invoke the protocol to address a widespread incident or threat;

—Banks arrange to have the appropriate resources, depending on the event, available for a conference call;

—A conference call is established by the CBA, and bank representatives exchange information on the status of their institution relative to the event;

—A consolidated, high-level snapshot of the situation is developed by the CBA;

—Collaborative action items and any initial plans are identified and a time is established for the next conference call, if needed. This process continues until an event is considered closed; and

—Debriefings are held after each event to share lessons learned and to improve the protocols process.

Now for the benefits: Having well-defined and documented information in place ensures that all banks are aware and understand what is required in any situation. This also helps to address multiple events using the fewest possible resources from each bank. Each bank can concentrate on managing the event and leave the CBA to focus on the exchange of information and communicating the status of the industry to the media or our regulators.

0930

In 2003, our event management specialists addressed SARS, the August power blackouts, forest fires in British Columbia, cyber threats—worms, viruses etc—and Hurricane Juan. Some of these events were occurring simultaneously. If we did not have formal protocols in place, it would have been much more disruptive to our industry to address each of these events.

In conclusion, we would suggest that having structured protocols helps to address an event. The protocols serve as a template to ensure a standard process is followed, regardless of the type of event. Debriefing after an event to share lessons learned serves to ensure that the protocols are under review and improvement.

Finally, and what may be the most important point, coordination through a central contact point enables

timely and effective interface with other agencies. For example, during last year's power blackout, the province requested a meeting with senior executives of each of the banks on a Sunday afternoon to seek the banks' assistance in responding to the blackout. Through our event management specialists, we were able to quickly arrange contact with the Minister of Finance.

We would suggest to you that you consider establishing key contacts within each of the critical infrastructures so that the province can quickly reach the appropriate resources to address the event. The Canadian Bankers Association would be happy to be that focal point for the banking industry.

The Acting Chair: Thank you, Mr Pattison. Mr Baird, would you like to add anything to that?

Mr Ron Baird: No.

The Acting Chair: OK, thank you.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Acting Chair: Next is the Canadian Federation of Independent Business. We've got Judith Andrew and Satinder Chera, director of provincial affairs.

Ms Judith Andrew: Good morning, Mr Chair. CFIB is pleased to be here to represent the views of small and medium-sized business on this very important issue: emergency management. Our sector is the most predominant form of business enterprise in the province. We represent about 98.5% of all businesses, and small businesses account for more than half of the employment in the province, so it's a critical piece of the economic pie here. As for our own organization, we have 42,000 member independent businesses in the province. They cover every sector of activity. They are a critical part of their communities.

Rather unfortunately in the last few years, there have been a number of disasters across the country. We have enclosed in some kits for you studies we have done on the impact of recent disasters in Ontario. You will find there a document entitled "Post-SARS Recovery Survey Report," and I'll come back to that one in a moment. There's also a document dealing with the blackout entitled "Power Struggle." In the past, we have analyzed the impact of the ice storm on affected members in Ontario and Quebec, as well as the Walkerton water crisis. Across the country, we have looked at the impact on our sector of fires in western Canada, floods in the Saguenay region of Quebec and other weather disasters such as the storm last year in Atlantic Canada. All of this information would be available to the committee if you wanted the broader picture. What you have is a couple of the more recent Ontario ones.

The impact of the SARS crisis was significant for our members. The report was actually done after the first wave of SARS, so it doesn't fully encompass the second round that, unfortunately, we all faced. I think our members were amazingly prescient in their views after the first wave. If you look at figure 5 of the SARS report,

you will see that, among the measures that they supported for helping affected businesses to recover, the leading item was to invest in health protection. As I mentioned, that was before the second wave, so our members were very much on board with the kinds of investments the province has made in safeguarding health protection around this and other areas.

In the aftermath of 9/11 CFIB became very involved, first of all, in looking at the impact on our economy of that event. We actually started to analyze the economic prospects for our members on a weekly basis, seeing if they were able to carry on with their businesses, and in the event that they were able to do that, that has actually evolved into a document that's in your kit called the "Quarterly Business Barometer." Interestingly our member index, the CFIB index for Ontario—and we do it for Canada as well—is a pretty good reflection of the GDP index. It's almost a leading indicator, at least from the half of the economy that's not stock-market-related.

Another thing we've done is put a big focus on border issues, and of course in the aftermath of 9/11 the border is not as fluid as it has been in the past. We've served on a number of federal committees, continue to do that, and have actually produced an information piece for our members entitled "Securing Your Business: A Cross-Border Checklist for Business." We see our role as attempting to help our members overcome some of the economic challenges that have ensued from the events that have occurred.

Another piece we've put together which we also deliver to our members—and I should have mentioned at the outset that we actually call on each one of our members at their place of business once a year. So we are meeting them face to face and are able to give them this kind of information, and I can certainly say that this piece, "Basic Emergency Management Guidelines," has been a popular item. People are more aware than ever that businesses that face a major crisis typically have some significant difficulty either reopening or surviving over a period of time. So this kind of little checklist for our members is something that we see as an important piece of our role in supporting them.

I wanted to say a bit about the role of government in all of this. I think our members, as citizens in their communities, take it as a given, as a basic, that it is government's prime responsibility to provide for the safety and security of its citizens. Generally speaking, when we ask our members where they support placing investments, they do support investing in public infrastructure that's productive.

On a survey that we conducted in advance of the recent budget—this is not in your kits but we can leave it with you; it's entitled "Putting Ontario's Fiscal House in Order." This particular study looked at our members' views on the value for money that they feel is being achieved with spending in various public service areas. In the justice and security area, 3% said very satisfied; 27% said somewhat satisfied, but the interesting thing is that 63% were dissatisfied with value for money on public spending in this area and, of that, 31% very dissatisfied.

As for future spending in this arena—and I know your committee's deliberations will come to this in terms of where investments need to be made—from our membership's standpoint in this recent survey in the spring of this year, about a third of our members support increasing spending in the security and justice arena, 50% say no change, and about 17% think it ought to be reduced.

0940

I'd just like to conclude a bit in terms of the role of businesses. Businesses, obviously, need to take whatever precautions they can. The government, business associations and businesses, in any event of disaster, need to be in good communication with each other. In a couple of the last events we've actually mounted a special Web site for our members. The blackout one comes to mind, where we made information that was coming from the province, emergency management, available to our members on the Web site. We put up labour rules and all the special treatments that ensued from that. So the notion of strong communication and giving citizens confidence that the situation is in hand and being looked after is very important.

As well, with our insurance colleagues in the room, I can't help but mention that there's a pretty important role for the insurance industry, obviously, to make sure that business people have the right types of coverage, that they are appropriately covered. There has been an ongoing problem with insurance availability and cost. Probably some of that has to do with the disasters that have taken place. But this is a pretty important one, where businesses and the insurance industry need to work together.

Of course with the banking sector, in many of these instances, I know in the recent one in Peterborough, bankers have stepped forward and offered to their business clients an ability to be flexible on payments. Governments have responded with flexibility on tax remittances. Those kinds of things used to be difficult to achieve. They now are part of the given package of response to one of these events and we see that as a positive. We don't have to ask for those things now, which is great.

I'll just conclude by saying that CFIB is glad that the government is looking at this area. It's a very important area, and we stand ready to support and assist in whatever way we can.

The Acting Chair: Thank you very much.

BRUCE POWER

The Acting Chair: Next is Frank Saunders, vice-president, safety and environment, for Bruce Power.

Mr Frank Saunders: Thank you for the invitation. My name is Frank Saunders. I'm vice-president of safety and environment. Emergency planning preparation as well as prevention fall within my mandate there, so I do appreciate the opportunity to come and discuss the subject this morning.

I'll tell you just a little bit about Bruce Power first because some may not be familiar with it. We're a power generation company. We operate in the northern part of Kincardine, up on the east side of Lake Huron. We're a nuclear power company operating six nuclear units at the moment, putting almost 5,000 megawatts on to the provincial grid. We employ about 3,500 people in the Kincardine area.

As a nuclear company we operate under a federal mandate, much like the airport authority. We operate under licence with them. We've had a very sophisticated emergency response and nuclear emergency planning program since we got that licence. It's very well integrated into the province's nuclear emergency plan.

Having said all that, the events, both of September 11 down in the States and August 14 up here, and some smaller events since then, have caused us to go back and do a little soul-searching and looking at our preparations in terms of where we should go in the future.

I thought the most useful thing I could do, when I had the call this morning to come and join you, was to talk a little bit about what we found in our soul-searching in terms of how we think we should advance. Perhaps some of that will be useful to the province.

As I said, we've had this very significant nuclear emergency plan for many, many years but in fact we've never actually had a nuclear emergency. The types of emergencies we respond to tend to be weather-related—snowstorms tend to occur up in Bruce county—and those types of things. Obviously, September 11 pointed out the possibility of other kinds of emergencies. So we thought we should look at our plan in that regard.

What we're actually doing is developing what we call an enhanced emergency response, or an all-hazards type of response. So rather than have a plan for a corporate emergency, a plan for weather and a plan for nuclear, which is the way we've sort of done things in the past, we're creating an integrated plan that provides an all-hazards response. It has a lot of advantages, from our point of view, in terms of minimizing the complexity of the plan; it minimizes the people we have to train to do it, and the cost is cheaper. In fact, the people who are doing it are much more efficient and effective at it, so you get a better response overall.

I have noticed that the province is now moving out to municipalities and putting different emergency plans in place, and it seems to me that they still have separate emergency plans in a number of areas: Emergency plans for nuclear are separate from plans for civil emergencies. It looks to me like they would benefit from a similar kind of approach of incorporating an all-hazards type of plan where nuclear is but one of the hazards, and if you happen to be in an area that has that sort of risk, then you would have that as part of your plan.

We also have on-site a pretty significant organization, in terms of responding. We have a hundred-plus fully trained and capable firefighters and emergency response-type people—rescue people, a very large, highly trained security force. These people don't have any particular

standing with the province, and that isn't really a problem for us in terms of how we respond to internal emergencies. But they're highly qualified and trained people who could reasonably be available, at least to some degree, in an emergency if there were some catalogue or some way that the province could look to see what level of training and skill they have, because that does vary.

The nuclear industry is by far now the only industry that keeps on-site firefighters and other things, but you need to understand their level of training and capability, because it does vary. I think that an inventory of these skills, readily available in a emergency, could be a very useful thing for the province to have.

The other issue we looked at—we've certainly been in contact with some of the small communities around our area. They've contacted us for help with emergency planning and other things, since we have some expertise there. One of the thoughts we had is that it might be possible to establish a pool of volunteers who have credentials in emergency planning and emergency drills as well as in response capability. Volunteers may be willing to go to some of these smaller communities and help them with their plans and even help in their response. You can envisage a county kind of role that people could call upon. Some towns are quite small. They can't possibly resource the full organization themselves. This kind of volunteer organization might be quite useful in the province. As well, it does provide a nice list of manpower, people who are skilled from a particular point of view that might be of use.

I did also notice that you have the Private Investigators and Security Guards Act in your list of acts to look at. As I say, we have a pretty sophisticated security system, as mandated by the federal government. Our officers at this point operate under the mandate of a public agency as provided by the federal department. We are interested in how that act is evolving as well, and whether that might impact on how we do business.

The Acting Chair: Thank you, Mr Saunders.

ENBRIDGE INC

The Acting Chair: Next, representing Enbridge, is William Bishop, manager of business continuity.

Mr William Bishop: I'm William Bishop, with Enbridge. I'm specifically representing the gas division. We also have an oil division that handles transportation of oil products within Ontario, but it's specifically the gas today.

Thanks again to the committee, as everyone else has mentioned, because this really is a good opportunity for us to come together and make some of our thoughts and concerns known, and hopefully make it into some legislation. I want to raise today a couple of points specifically from some of the recent events we've been involved with, such as SARS, the power outage and most recently the Peterborough incident.

First is notification of an incident. The municipal and provincial plans need to bring in some automated

notification process so that major stakeholders are brought in at an early stage. It's not always apparent that the natural gas infrastructure could be involved, such as in the Peterborough flood, because everybody is dealing with the water situation and so forth. But if we're notified early, it gives us an opportunity to put in some really critical and key planning for contingency that we need to do. For example, if the water is going to impact our system, we put in contingency plans around isolation and so forth, and this has the effect of really mitigating a more widespread interruption if gas is impacted. So we're able to minimize the effect. That really is significantly important if that was January, for instance, and instead of having 1,000 or 1,200 customers impacted, you would have 10,000 impacted. It's a much greater emergency.

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So the earlier we're notified of an incident—and we'd just like it put into legislation that the major utilities are notified. That can simply be a fax notification or a call to our emergency dispatch. Of course, we then have escalation, response and management teams in place to escalate those; at least it gives us an opportunity to make that evaluation.

The next thing I wanted to mention was mutual aid. I'm not sure in the acts right now how much force or weight the government can bring to bear for sharing of critical supplies and resources. When you just think about the power outage most recently, gasoline and diesel and so forth become a real issue. As a private utility, we can put in certain strategies and plans to power our own vehicles that are involved in emergency response, but how much fuel? You can only have so much. Then also, if those depots where you have those supplies are impacted by some hurricane or tornado damage, those are out of commission. We really need to be included in a longer-range or something of a larger magnitude emergency for those kind of considerations. As far as generators are concerned, many private and public institutions rely on diesel generators. Of course, we would advocate natural gas generators and you wouldn't have these problems, but still, the sharing of critical supplies. It could obviously go beyond gasoline. It could get into materials and transportation, even communications and so forth. So I just want to bring that to your attention.

The other thing was—and a few speakers today have mentioned it—training and mock exercises are totally crucial to having a good emergency plan. Since I've been involved in my position in the past year or so, unfortunately there have been very few opportunities extended for us to get involved with some of the municipal and provincial mock exercises. I'd like to see more of that. I know within the Emergency Management Act today there are two or three references to involving others, but I think that needs to be clarified. It really is important that we be involved.

Again, it may not always be that we're directly involved, but I can't think of too many emergency incidents, whether they're man-made or some sort of

terrorism or accidental-type of emergencies, where there wouldn't be at least some impact on gas customers. Between ourselves at Enbridge and the other large Ontario distributor of natural gas, Union Gas, we service collectively nearly three million premises. So that makes us a pretty significant player or partner in emergency response.

We do a lot of training right now with police and fire departments, and that has worked out very well. We have a very good relationship with those groups, but really we need to go to that next plateau, which is the emergency planning groups and so forth. I've been involved in some very useful exercises and it really is an opportunity to understand each other's capabilities and limitations, because when you come down to the crunch in an emergency, you don't want to be exploring what the other party can or cannot do. It's really helpful to know up front exactly what those players can do.

As well, somebody mentioned the need to have an industry- or government-driven kind of organization to bring incident management to the fore. I would advocate that as well. I know in some of the states they do that right now; in fact, they mandate that utilities be part of or have an incident command system in place. I guess in Ontario the equivalent would be the incident management system, which is employed typically by fire departments and some police departments and so forth. But I think that needs to be broadened out a lot.

Next was lessons learned. Specifically with regard to Peterborough, I've asked to be included in any post mortem that they do for the Peterborough incident when they have a chance to pull that all together. I think any of the major partners in the community need to be part of that kind of process as well. The lessons you can learn for the next type of event, which is probably never going to be a similar one, will be something that you can at least build on or use that experience going forward. Just as we had a lot of lessons from SARS, could we use them for the bird flu preparations? We started looking at that at Enbridge back last spring just to determine, if that became widespread, what we did during the SARS epidemic that was useful for going forward.

Of course, for us during SARS, it wasn't even a matter of just keeping our own operations going; it was also a matter of having to prepare our employees to go into premises that were quarantined and so forth for emergency response purposes. So we have a kind of dual role in that type of situation. The lessons learned and training exercises are just totally crucial.

One of the last things I wanted to bring to the attention of the committee was that Alberta has adopted a system—I forget what they call it—an early warning, an early alert type of system. I believe it's based or modelled on the US homeland security type of system. It's a colour-coded system. While it's arguable that the definitions used in the American system and so forth might not be appropriate, and the way they employ it is not always, to my mind, appropriate, at least it's a benchmark that everybody in the community starts to

understand, because you don't want to react just to when you've had an emergency. You could have impending situations—severe storms on the way. Hurricane Isabel, for instance, was last September and we started putting strategies in place.

I think there needs to be province-wide coordination. You give it some colour and maybe that goes to an orange alert or something, and everybody becomes quite clear about how serious that is. Also, when you do have a declaration like that, you know what the other responders and major players are starting to do and what plans they might invoke. I think that's just really useful for going forward for us.

With that, I thank you.

The Acting Chair: Thank you very much, Mr Bishop.

PRIVATE SECTOR PANEL

The Acting Chair: I guess that's the presenters who are here. Now we'll go to the members of the Legislature, with 10 minutes per caucus. We'll start with Mr Dunlop: 10 minutes for questions or comments of the presenters.

Mr Garfield Dunlop (Simcoe North): My question is going to be fairly simple. Because this is a lead by the government and they're taking a proactive role in the review of emergency management, I'd like to ask each of the presenters very simply what, if anything, you would like to see the government do to change anything in the system that would make it better for the private sector to do business around the review of emergency management.

Mr Saunders: I think we all appreciate the review that's going on. In fact, from the nuclear industry point of view, we have been engaged with emergency preparedness and discussing nuclear plants and looking at how that should change.

I think there is an issue about how communities will plan for this that will eventually impact on us and the requirements on communities such as Kincardine and others that have a pretty sophisticated plan in place. There is some thought in terms of how we're going to resource that and pay for that. Eventually that money comes from the taxpayer and local businesses, so the more efficient we can make that process, the better. That's why I was talking about a whole hazards approach because I think, at the end of the day, that will be more efficient and more effective and it will cost you less money.

I think we need to not only think about getting emergency plans in place but also, at the same time, think about how we're going to sustain the support in the future. I think there's a lot of activity at the moment about getting emergency plans in place, which is justified; it's the right thing to do. We also need to turn a little bit of thought to the sustainability part. I do think a company such as ours can provide some assistance there [inaudible].

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Ms Andrew: I think from the standpoint of CFIB and small business, the notion of having a better-coordinated system and a more coherent information dissemination approach in times of emergency would be very helpful.

We noticed in the SARS crisis that there were various communiqués coming out of various ministries, whether it was the Ministry of Labour, the workers' compensation board or the Ministry of Public Safety and Security. All the communications seemed to be separate, and we actually had to build our Web site in order to gather them all together for our members. We took that initiative, but it would be better if there was more coordination and better communication. I think there have been some good suggestions around the table this morning on developing the various response levels, that people understand what's happening.

Mr Bishop: My wish list is a seat at the table for some of the emergency command centres when they're set up. If I could just go back to Peterborough for a minute, I guess it was early morning that we tried to get some information. The way we found out about it was news reports, and then we started checking into it. We had had very few customer calls, which was a little unusual, but I guess everybody was so busy with water pouring through their doorways.

Eventually, we had our war room command centre set up, and I said: "We've got to get somebody into the Peterborough centre. We've got to have some information. What are they doing? What are they looking at? What strategies are they employing?" and so forth.

So, for us it's a seat at the table. The only place where we have that right now is the city of Toronto. I guess, with their size, they're able to do that. They have a full command centre, and we have a seat, along with Bell and all the other utilities and transport, and so forth. So we are called together as a group when something significant is on the horizon, but it's the only municipality where that's done. That's what I would like to have: early notification and a seat at the table, where possible.

Mr Smith: From the airport authority's perspective, we have a unique view of the whole thing because of federal jurisdiction within two of the largest cities in Canada, being Mississauga and Toronto. To the point of Mr Bishop, mutual aid is so important to us. We rely very heavily on that, and we have very tight liaison with most of our mutual aid providers. But I guess our panacea for emergency preparedness is seamlessness from municipal to federal.

Whatever statutes you put in place, we've got to make sure that both ends—if it's provincial, then we have to make sure the municipal covers off on the municipal side and the federal takes over where the provincial leaves off. We find right now that there are gaps, and we're certainly looking forward to being part of the process to help fill those gaps and make sure that across the board, from municipal to federal, we're all taken care of. That certainly helps us in the mutual aid effect. The Quarantine Act is the one issue I brought up that shows there are

holes right now. Also, as I said, we are preparing and will have something formal to submit, hopefully within the week.

Mr Yakabuski: May I respond?

The Acting Chair: Yes, Mr Yakabuski.

Mr Yakabuski: I guess I'd make three points. First of all, with respect to emergency planning, I think that Ontario has made considerable progress over the past few years. There's no doubt that we are in a better state than we were several years back. Municipalities are now being required to draw up municipal emergency management plans. They have to be comprehensive by 2006.

My cautionary note on that, as I was mentioning before, is that it's absolutely vital that Emergency Management Ontario play a role in making sure those plans are comprehensive, that they stand up against what an emergency management plan is supposed to contain and that those plans be tested by periodic mock situations, because that's the only way we can make sure we're in a situation where we've got the right resources deployed at the right time to respond to an emergency.

I have to tell you that in many of the mock situations we have been involved in, it has become very clear that adjustments to the plan are necessary. That's been a good thing to know before the emergency hits. So, mock disaster planning should be part of that, and I think Emergency Management Ontario has a role to play.

The second point I'd make is with respect to disaster relief. I think it is very, very important that there be transparency with respect to disaster relief. In any community that's hit by a disaster, the last thing you want to face is a situation where some people feel they've been dealt with better or less well than others.

For example, when the province is planning the provincial contribution with respect to disaster relief, they need to know how much money is being paid out by insurers and whose insurance claims are being paid. Without that knowledge, you don't have the intelligence you need to ensure that disaster relief is being directed to the best people. I have to tell you that sometimes that doesn't take place as well as it should. I think that can be done more easily and more transparently. I know the insurers of Ontario are certainly prepared to make sure that happens, from our point of view.

Third, with respect to prevention, as I mentioned in my remarks, we have to take prevention seriously and give ourselves the means to ensure that prevention is taken seriously. I gave you the example that has been developed in the United States, where 15% of all disaster relief is automatically earmarked for prevention measures. This is what it takes to ensure, for example, that critical infrastructure is immediately taken care of in the aftermath of a disaster.

We know there was a flood in Peterborough two years ago. I can't tell you what happened in Peterborough two years ago in the aftermath of that flood—not a great deal. If communities know there will be some monies directly related to disaster relief that are earmarked for preventive measures and that can be directed to infrastructure or

other, there is more likelihood that these efforts will take place.

That's the three-part solution I might advance to you, in all modesty, this morning.

The Acting Chair: For the information of the committee, I would like to get some information on what measures were taken in Peterborough after the flood that occurred a couple of years ago. Can we get that from research?

By the way, my understanding is that the flood two years ago was a 100-year storm. This one was a 300-year storm. They did take some measures, and they weren't enough. They anticipated another 100-year storm, but they didn't anticipate a 300-year storm. We'll get that clarified for our information.

Mr Yakabuski: I guess this is the challenge we all face. I talked about the reality of climate change. What might have been considered a 100-year storm 25 years ago may not be a 100-year storm today. That's why we have to at least review our thinking on these matters.

The Acting Chair: We have asked a number of climatologists to present to this committee. Dr Phillips and Dr Smit from the University of Guelph have been invited to come.

We now go to the Liberals. I know Mr Zimmer had his hand up, and Ms Broten. Mr Kormos will be next.

Ms Laurel C. Broten (Etobicoke-Lakeshore): I want to pick up where Mr Bishop was talking about one of the things this committee is looking at: powers of the state during extraordinary circumstances. Our province differs from some of the other provinces, perhaps, in that we don't have the ability to ration. We've raised that through our own examination in a number of contexts; for example, telephone lines being used for emergencies, issues of natural gas, issues with respect to cash being dispensed when we are in a blackout circumstance.

From the private sector perspective, I want to ask you to give us your best indication of what you think we would hear from your sector if that was an avenue the government pursued, in terms of a power we sought to develop.

Mr Bishop: I can't really speak knowledgeably to that issue. But I do know that if we had a serious supply emergency, we definitely would be dealing with the Ministry of Energy on curtailment and load-shedding issues, and they could come down. Typically our plans today are structured so that the residential community is the last group you would want to take off-line. So you go through a whole phased curtailment process. You take off what we call curtailed-class customers that get a better rate and so forth.

1010

Then you go into large-firm industrial users. You curtail those and other industrial groups, even to the point that we have isolation areas identified, where we could go in with two or three valves and basically shut off an industrial park, so to speak. You can do that fairly quickly. It still takes time to get crews out there and keys on these valves and so forth, but you can shed load in that

way. To keep the residential community up is so important, but it can come down to the crunch, where you need to be able to say—because you have several distributors in the province. You might be saying to Enbridge, “We want you to curtail the GM plant because we want to keep up Hamilton,” like the residential area. So there is a need to have that kind of cohesion.

Having said that, there’s also a danger in having too much intervention in our existing plans. The reason I say that is because we have the skills and knowledge to look at supply issues and all of the workarounds. There are always a number of options that we can employ, but you run some fairly sophisticated types of analyses to be able to determine which is the best way to go. Some of that you can pre-plan, but some you can’t. You have to wait until you’re struck with the actual emergency to know all of the variable factors and the individual circumstances that would apply to that situation. I don’t know if that’s addressing—

Ms Broten: Thank you. CFIB, did you have any comments about that?

Ms Andrew: We’ve canvassed our members on all manner of things, but not on rationing in times of emergencies, so it could be one that we could pose to our members.

I would point out, in the Power Struggle report we did after last year’s August blackout—in the week ensuing, when it took such a period of time to get the full system up and running—figure 3 shows the voluntary measures our members took to reduce their power consumption. Pretty much everybody reduced their use of air conditioning and lighting and so forth. So the Premier’s persuasive powers in the public press certainly helped to address that and make rationing be not a required thing, but rather something that all citizens pitched in toward.

Ms Broten: I don’t want to limit the issue of rationing to electricity, though. The examination in other provinces has been with respect to other products as well, products that some of your members may be selling. The province would say, “We need to sell this certain product at a certain price, and it has to be distributed around.” From that perspective, do you have any comment from the business sector?

Ms Andrew: We haven’t canvassed our members on that. I know there were some press reports last year about price gouging on gasoline. I think there was enough public furor about that that it didn’t happen. There was a little bit of discussion. Again, the public pressure prevented that kind of escalation, even though there was a shortage and difficulty getting it.

Ms Broten: Thank you. Anyone else in response? The Canadian Bankers Association.

Mr Pattison: I guess, in any widespread situation, we’re very cognizant that cash is king. People revert back to cash. The plastic transactions might not be working, so it’s almost a standard reaction that we make more cash available and that sort of thing.

Ms Broten: During the blackout, for example, were there measures undertaken, through your member organ-

izations or the bankers’ association, to deal with making sure more cash was available when banking machines and Interac etc were down?

Mr Pattison: I think the big push was to reopen branches, particularly ABMs, to make that available. That was done on an individual basis, but the information was shared with the group.

Ms Broten: Was there an after-the-fact analysis done by the CBA to determine whether or not you were satisfied with the outcome of that process?

Mr Pattison: Not per se; I don’t think so.

Mr Baird: Another focus during the blackout, as was mentioned earlier, was on conservation of energy. That was a big issue in our protocols and discussions, to conserve energy across the province and at branches as much as possible.

The Acting Chair: The 10 minutes are up, so we’ll go to Mr Kormos’s turn and then we’ll go to Mr Zimmer and Ms Sandals.

Mr Peter Kormos (Niagara Centre): Do your questions flow from hers?

Mr David Zimmer (Willowdale): Not necessarily.

Mr Kormos: I won’t relinquish my time.

Mr Zimmer: Thank you for the offer, Mr Kormos.

Mr Kormos: It was just a show offer. It was just to make me appear to be—

Mr Zimmer: Trying to collect your thoughts quickly.

Mr Kormos: Because I’ve wanted to talk to Mr Yakabuski since the last time he and I talked. I very much appreciate your comments.

Most of us, I’m sure, were watching news over the weekend of the Florida scenario. In the Miami Herald, Carl Hiaasen has made a career of damning developers and building inspectors in Florida for being corrupt and condemning the low standards for building codes, which is obviously part of the problem.

Appreciating very much that you’re here today, but why isn’t—and maybe it is; if it is, say so or tell us how—the insurance industry more actively involved in risk management? To wit, we just had a problem in Welland during a heavy rainfall a week ago where the Welland sewer system in some of the newest subdivisions wasn’t dealing with the rainwater, so basements were backing up. A huge number, for a small town like Welland—these people are making insurance claims; it’s going to cause a whole lot of grief. They’re going to risk not having coverage, as you well know, in home insurance because it’s not mandatory. So they’re going to risk having their coverage pulled once they make the claim.

Why isn’t the insurance industry more adamant about these valves being installed in basement traps, for instance, as part of a building code to protect homeowners from this sort of damage, and thus the insurance industry from the claim? Why isn’t the insurance industry more actively involved in, let’s say, building codes and calling or lobbying for standards in building codes that would presumably protect the insurance companies’ interests in the event of any number of weather conditions that would cause household damage? As you

know, these are the sort of claims that are frequent and are benign on the part of the claimant. They're innocently applying for coverage or for compensation, not realizing that there could be consequences down the road.

Mr Yakabuski: I'm intrigued to hear those remarks. Usually we're criticized for being too active in risk management and insisting that people have certain things under their policy that might cost them money to install.

I can tell you that we've taken a pretty active approach toward building code issues. We've actually set up an institute called the Institute for Catastrophic Loss Reduction. We have an institute at the University of Western Ontario that tests all kinds of building materials to ensure that we can feed that intelligence to the people who review the building code on a regular basis. So we are providing advice to municipalities across this province and country with respect to what they have to do in order to get sewer backup coverage.

Usually sewer backup coverage—the stop valves are certainly a good thing but they're not 100% foolproof, as you know. The really big thing that allows us to be able to tell people that sewer backup coverage is available or not is the history of municipal infrastructure. I revert to telling you that there is no single issue that is more going to be able to allow us to manage natural disasters in this province than having an integrated strategy with respect to municipal infrastructure investment. We need to find ways of helping our municipalities, first of all, identify where the inadequacies are, and let's do it in a totally transparent way. We know that there are parts of this city and other cities where the sewer systems haven't been replaced for 70 years. We know that. Let's talk about that. Let's make sure that our infrastructure dollars are directed to those needs that are transparently evident.

From an insurance point of view, we want to be part of the solution, but we don't believe it's responsible in any shape or form to offer unrestricted coverage in areas where we have a history of recurring sewer backup or flooding problems. That's essentially allowing the municipality to get off the hook, and of course we don't want to be part of that. But we do want to be part of working with the municipality to identify inadequacies and estimate what work has to be done in order to correct them.

Having said that, you're absolutely right: The best information needs to be available, and it has to be built into the building code. We are a part of that exercise, and we would like to work with the province and municipalities at being more of that exercise in the future.

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Mr Kormos: Is there a process for feedback? For instance, there's a close relationship in the auto sector with MTO in reviewing the records of drivers and so on, and that's understandable. Is there a similar intimacy between the insurance industry and provincial or municipal governments that provides reporting back on these types of claims? That's number one.

Number two, could you talk about Peterborough a little bit and what's going to happen, because there were

anecdotal reports about people whose coverage was either diminished or cancelled after the floods recently—prior to the most recent floods—and then more fears that the impact of the claims during this catastrophic flooding was going to result in more people either having coverage diminished or, in fact, cancelled.

Mr Yakabuski: I think some of that discussion is premature. First of all, with respect to liaising with the provincial and municipal governments, when there is an emergency of any kind, we are in close contact with the Ministry of Municipal Affairs and Housing here in Ontario. They are kept well informed of the insurance payouts that are taking place so we can make sure that disaster relief, as I said, is directed to those people who really need it and not those people who have already received a large insurance claim—so that coordination.

I think there perhaps could be improved liaison after the disaster. When you're dealing with immediate issues of recovery, you've got to get to the people who are in need. This is not a time for navel-gazing, if I can say that. But there is more time for navel-gazing after the event, and perhaps more of that should take place with the province and the municipalities.

Unfortunately, after an emergency, there's a bit of an adversarial mode or frame of mind that sometimes comes into play where there is a disagreement between the municipality and insurers, for example, as to what the infrastructure inadequacies were. I would strongly recommend more transparent discussion there: We're neither right nor wrong; let's talk about the issue and make sure that new infrastructure money, if some is available, is directed to the right places.

With respect to Peterborough in the aftermath of the floods, I listened to the testimony of Dr Young before this committee a week or so ago, and he talked about 100 basements being flooded. Well, as of yesterday, we had responded to 4,553 claims. For those who want to suggest that in some way the insurance industry is not responding to the people in need in Peterborough, I think that would certainly be in contravention of the facts I've just presented. I mentioned to the committee earlier that, to date, we estimate our claims payments will be in excess of \$86 million as a result of that. So I think we are responding to the people in need in Peterborough.

Are some people not going to get their insurance coverage renewed in Peterborough? I think it's far too soon to say. First of all, we have to do the assessment as to what really was the nature of the problem in Peterborough. I appreciate the points you've made in that regard, Mr Chairman, and we would certainly want to follow that discussion very closely. We need to establish what really caused the flood in Peterborough.

Mr Kormos: Other than the rain.

Mr Yakabuski: Other than rain. To what degree was the infrastructure inadequate? Were we dealing with a 300-year storm or not? Then we've got to assess these things. I can assure you that it's very clear from the payments I've been talking about that the insurance industry wants to be part of the solution in Peterborough.

Mr Kormos: But you're suggesting there may well be denial of ongoing coverage.

Mr Yakabuski: What I'm saying is that that's entirely premature. We're going to have to look at exactly what all the factors are in Peterborough and determine. We're not in the business, believe it or not, of cutting people off from coverage. That's what allows us to remain in business. We want to be in Peterborough. It's a long- and well-established community in Ontario.

Mr Kormos: Just one more fast one. We had the fire marshal here yesterday, along with various levels of policing. Again, talking about firefighting services, you know the fire marshal's office is mandated to set standards to assess the level of fire service capacity in any given community. Is the insurance industry involved, in any way, in calling upon municipalities to meet the standard set by the fire marshal's office?

It seems to me that this is an inherent part of risk management. If there's an inadequate level of firefighting services, including fire prevention, which is probably more important in this era than firefighting, because that's what it's all about, it seems to me the insurance industry has an interest, either by way of identifying municipalities—in other words, is the insurance industry going to community X and saying, "The reason you're paying 5% higher rates is that your community hasn't fulfilled its obligation to meet the standard level of service"? Isn't it inherently in the industry's interest to do that? If it's not doing it, why not?

Mr Yakabuski: Well, we are. Fire departments across this province are rated on the basis of their preparedness for a major fire incident. People's home insurance policies reflect our assessment of their proximity to well-equipped fire services.

Mr Kormos: Are you talking about distance?

Mr Yakabuski: It's not just distance. First of all, there's the distance from a fire hydrant, there's the distance from a fire casern or whatever, there is some assessment as to the capacity of a municipal—

Mr Kormos: Some assessment? Do you adopt the fire marshal's standards?

Mr Yakabuski: We work closely with the fire marshal. We sit down with the office of the fire marshal on a regular basis. I met recently, as the Chair will know, to talk about volunteer firefighters in the province. We have a good dialogue with the office of the fire marshal of Ontario, and I totally agree with you that it's appropriate that we have a good dialogue, because being able to assess these services is very important.

Mr Kormos: Where do I get my community's rating with the insurance industry? Who do I call?

Mr Yakabuski: I can look into that and get back to you.

Mr Kormos: Please.

The Acting Chair: We'll now proceed to the next portion, which will allow for questions by MPPs or by expert panellists. You can ask questions of each other, or you can ask questions of the MPPs, if you like, and vice versa. We will go around the table. Please indicate if you

would like to pose a question or make an additional comment, ancillary to your initial statement. We've got some members indicating they would like to ask questions: Mr Zimmer, Mrs Sandals and Mr Arthurs so far.

Mr Zimmer: The committee has learned that there is no provincial or federal jurisdiction in Canada, other than Saskatchewan, that has any contingency funding or reserve funding for payouts after a disaster. The rationale of all the governments, federal and provincial, seems to be that they don't want to set up a reserve fund or any contingency funding because who knows what they're going to have to pay out, so why bother setting up the fund? Saskatchewan has a modest fund. They put in about \$1.5 million a year, and their rationale for doing it is that this helps eliminate delays in getting money for recovery into the victims' hands.

1030

Obviously I'm assuming, or I understand, that in the private sector, in the insurance industry and so on, you would have reserve funds and contingency funds set up to pay out these claims. I'm wondering if you think there's any benefit in governments, provincial and federal, having such contingency funding or reserve funding. If you think that's a good idea or appropriate, how would you fund the budget, what amount should be in those budgets and how would you administer the budgets?—a general comment on that, keeping in mind that the rationale of governments for not funding it is that it's too complicated to predict. That doesn't seem to be the thought behind the Saskatchewan funding.

Mr Yakabuski: Unfortunately, one of the things we can predict is that we will have more emergencies, and we can predict that they will cost us money and we can predict that in this age of climate change and other things, they will cost us more money than they have ever cost us in the past. I believe that today those facts are incontrovertible.

I mentioned in my remarks that we made a proposal a few years ago—and I believe this has application at both the provincial and federal levels. We do not, as part of our emergency response programs and as part of our emergency recovery programs in Canada, have an amount of money that is earmarked directly for recovery that is made on a discretionary basis by governments when an emergency hits.

We actually do not have contingency fees as homeowner and business insurance companies. As a matter of our licence in business, we have to have enough money in the bank effectively to pay all potential claims, but we don't have special contingency funds earmarked for the payment of insurance-related disasters in emergency situations.

What we actually recommend, and have recommended for some period of time, is that effectively the provincial and federal governments look at setting aside a modest amount of money in a fund that is allowed to grow over time, tax-free, so that you are not faced in a tight budgetary situation with having to make those compromises

with respect to how much money you should dedicate toward disaster relief; the money is readily available and it can flow to people on a purely objective basis, based on the analysis of where the need is. As I say, this money ought to be able to grow tax-free, and the insurance industry would be willing to participate in that. This is a way of ensuring that we have the resources to respond immediately and transparently to disasters and we also have money earmarked for the recovery process, which usually is the thing most distant from our minds when we're dealing with a disaster.

Mr Zimmer: I wonder if the bankers would like to comment on that.

Mr Pattison: I'm not sure we have an answer directly.

Mr Zimmer: The Saskatchewan experience, with the fund as modest as their annual contribution is, seems to be that it takes away a lot of the immediate post-disaster bickering over who is going to pay what, and the time frames for payouts are noticeably shorter. Does everybody accept that thought or take exception to that? Perhaps to the insurance bureau.

Mr Yakabuski: Just consistent with what I said, I do think that having some kind of fund that is readily available in good budgetary times and in bad budgetary times is a way of making sure that disasters are dealt with as quickly as possible. I would want to make sure that some of those funds are available, as I said, for the recovery process as well.

Mr Zimmer: Any thoughts on where those funds should come from?

Mr Yakabuski: As I say, I think the best way is for the government to essentially set up a relatively modest fund in the beginning and allow that to grow over time. We talked about an initial contribution at the federal and provincial levels of something like \$50 million, which is not touched, is allowed to grow and is invested, and those resources grow tax-free.

Mr Zimmer: Given that there could be benefits in that for the private sector, do you see any role for a private sector contribution to such a fund?

Mr Yakabuski: We have actually set out—as I say, this is about four or five years old now, because the governments of the day didn't give it much consideration. We would certainly see the insurance industry participating in that way. I think we would be quite open to talking about making contributions of our own to some sort of fund on the basis that these funds would be set aside, could not be touched for other purposes and would be allowed to grow tax-free.

Mrs Sandals: I have a number of issues I'd like to explore, but let's start with the issue of quarantine. One of the things that has been suggested to us is that the provincial legislation around quarantine could perhaps be more forceful. The GTAA raised the issue of some problems with the federal quarantine legislation, because Toronto is very often a second point of entry.

If the province were to beef up its quarantine powers, would that have any impact on the GTAA, or would you continue to be governed solely by federal legislation with

respect to travellers? Would additional provincial powers have any impact on the GTAA?

Mr Bertram: Quite frankly, I don't know. I think one of the concerns is that there is no legislation or regulation that clearly outlines jurisdiction. Scott mentioned someone falling through the cracks who comes to Toronto as a secondary stop, but I think that's just one of a number of examples where there is no clearly defined relationship between federal legislation, provincial legislation and, perhaps in the area of the EMO, regional jurisdiction. So I can't say. I don't know the answer to that.

In the case of deaths, for instance, we've worked very closely with Jim Young in relation to where the coroner's responsibility has an impact on federal property governed by federal regulations. It's one of those things that would probably take a little bit of research, and we'd be happy to look into it and get back to the committee on it.

Mrs Sandals: That would be very helpful. We have a problem here sorting out in whose jurisdiction you fall. Given that it's provincial legislation which is under our control, are there areas where it's quite clear that the provincial legislation applies within the GTAA?

Mr Bertram: For instance, in mutual aid, police forces are required to have mutual aid programs with neighbouring police forces as part of their provincial accreditation. That's a requirement under their regulations. There's no such requirement—and I think it goes to what was said earlier about the size and expertise of some private sector organizations like the airport and power generation—for mutual aid emergency plans, for instance, which would be very helpful only in that it would cause neighbours to sit down and come up with a plan ahead of an emergency. We do it as a matter of due diligence, but there isn't that requirement.

1040

Similarly with the fire services, the legislation is restrictive in that it only allows municipalities to sit down with other municipalities and enter into a mutual aid circumstance. There is no provision for a municipal fire service to enter into a mutual aid agreement with the private sector, which in our particular case, with our foam capabilities and with some of the refineries around, particularly in Mississauga, becomes quite critical because we're called quite frequently.

So that type of enabling legislation, which recognizes that the private sector has in fact a highly mobile, highly trained, highly specialized expertise to draw on, but with some provincial authority to enable that mutual aid sort of activity, would be an area where provincial jurisdiction is—the Highway Traffic Act, for instance, has some applicability to the roadways and so on. So there are a number of pieces of provincial legislation that are applicable, notwithstanding the fact that the geography is federally owned.

Mrs Sandals: So will you, in the note that you're sending to us, highlight those areas where the interjurisdictional problems exist so that the committee can be aware of all those areas in which we need to have some thought to how we co-exist with authorities that are under federal legislation?

Mr Bertram: Absolutely.

Mrs Sandals: I would think that the same might apply to Bruce Power because, again, we're dealing with an issue where clearly you're quite regulated by different federal legislation. It would be very helpful for the committee, I would think, if we were able to get a handle on where these sort of grey areas—mutual aid, cross-planning, cross-responsibility—

Mr Bertram: Absolutely. One of the prime focuses on coming down today was to hear what areas were of interest or import to the committee and to respond to them. So we'd be happy to do that.

Again, it's the power people who are more closely aligned to the airport people in this regard, but you're dealing with different levels of accreditation, different levels of training. By the very nature of the private sector, we, through due diligence, have a very highly trained staff—in fact, in most cases, a more highly trained staff in certain areas than the municipalities—and we would like to avail ourselves of a provincial accreditation process so that there is some standardization—and I think that was mentioned earlier on—in the responders. That takes the guesswork out of somebody coming to my door, so I don't have to question his credentials. I know that when they come and they're offering assistance, they're offering it at a certain level and we can get on with the next step.

Mrs Sandals: I think it would be very helpful to have that sort of information from both organizations. It also occurs to me that this cross-references a conversation we were having yesterday with the fire marshal around, in times of emergency, accrediting people from other sources to do things they don't normally do. That was crossover from emergency and fire services, but now we're talking crossover between public and private. It's a similar sort of issue that we may want to pursue.

Mr Saunders: I agree. I support the issue. Like the GTAA, we tend to work out our informal agreements with the local authorities and we mutually train and do other things together. However, it's a tremendous resource that's sitting there. On our site we have about 115, 120 emergency responders—firefighters—equally as well trained and, like I say, actually probably better trained in a number of specific skills. But there's no way for the province to know in an emergency what that level of training is, because they just don't classify. If you're not employed by a municipality, you're not a firefighter, in the way the current legislation sits. So there's no way for somebody who is looking for help in an emergency to say what they are capable of and make some reasonable decisions along those lines.

To me, it's just a wasted resource that could be there. Obviously, we need them on our own site as well, or we wouldn't have them there. But in a major emergency, you're always going to do what you can to help.

Mrs Sandals: If I could go back to quarantine—and this is for the CFIB—when we were talking with Dr Young about quarantine, and I think the Ministry of Labour raised the issue too, one of the reasons that

people gave during the SARS outbreak for breaking quarantine was a perception, which might or might not have been true, that if they did not return to work, they would risk losing their job. I'm wondering how the CFIB would react in emergency situations, in the sense of there being some sort of job protection that clicks in, either when people are quarantined or in some other way having to react to emergency situations, so that there would be job protection for the workers who are in some way embroiled in the mechanics of the emergency.

Ms Andrew: Our small business members are working shoulder to shoulder with their employees. I doubt if, in any of their situations, there would be anyone who would have wished someone to break quarantine in order to safeguard their job. Our members, in difficult situations, in difficult economic times, tend to try to hang on to their valued employees. They don't lay off people. I don't think you'd need legislated job protection for that, in the case of small business.

One thing that did come to the fore was the question of people's pay during the period that they were quarantined. The Ministry of Labour eventually did put up some information on that, which we were able to post on our Web site and convey to our members. Basically, our members wanted to know what the rules were around that. But I don't think there was any question of anyone losing their position.

Mrs Sandals: Because that certainly has been a concern with the quarantine.

The Acting Chair: May I just follow up on your question? I think what we require here for the committee, just for clarification, is legal counsel, Mr Nigro, to perhaps present some kind of legal brief on—not a legal brief, but certainly some kind of summary of quarantine jurisdiction as it relates to the province and the federal government. Would that be possible, or should we ask research to do that?

Mr Albert Nigro: Just for the record, it's Albert Nigro from the office of legislative counsel. My indication from my director is that I'm here to draft legislation. We don't normally do research in my office, in respect of things like the current legislative picture. In fact, we usually expect our clients to come to us with that kind of information. So if what the committee is looking for—

Interjection.

Mr Nigro: And you know that, Mr Kormos.

The Acting Chair: I told you that we should have got outside counsel.

Mr Nigro: So in fact, if you're looking for research on the situation, I strongly recommend that you look for legislative research service or someone else, because that's not my role here.

The Acting Chair: I told you we should have got legislative counsel from outside. See? We can't get what we need.

Mr Kormos: I would have told you to stuff it too, if that wasn't part of the job description.

The Acting Chair: OK. Anyway, research?

Ms Margaret Drent: I happen to have done some work on the question of jurisdiction over quarantine. I could bring that, if that would be of interest to the committee, this afternoon.

The Acting Chair: It certainly would. We'd like that made available to us, and I'll certainly make it available to some of the presenters here. It's just a clarification of jurisdiction here. That's what we're trying to get. Anyway, research will take care of that question posed by the GTAA.

Mrs Sandals: If I may, is it also possible, then, to get some of the muddy areas in terms of some of the other services—the private emergency versus the public emergency, and the issues that have been raised around firefighters and private security people and when they can be called into use or whether they can be in an emergency, which seems to be another area?

1050

The Acting Chair: Like the secondment the fire marshal mentioned yesterday; clarification of that.

Mrs Sandals: Yes. So, for example, the fact that we've got a private fire force at two locations and a number of others around the province which are highly trained but aren't recognized as firefighters under the fire protection act, and what the legal issues would be there.

The Acting Chair: We'll leave that with research, then. Yes, Mr Bishop?

Mr Bishop: I was just going to say there is some precedent for that kind of mutual aid between private sector industry and government. Down in the Sarnia-Lambton area there's an organization—and the name or the acronym escapes me. Anyway, it's like Petro-Canada, Union, Enbridge, Nova and so forth. Members of that organization can call upon other agencies for equipment, resources and so forth in the time of an emergency. I think that's either coordinated or facilitated by the Lambton OPP. So it might be worth taking a look at something like that, because that does exist today.

The Acting Chair: We can have research look into the example of Sarnia given by Mr Bishop. Thanks. That's very helpful. In fact, we have the emergency manager from the city of Sarnia appearing before the committee this afternoon, so we'll be able to follow up.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): My question today may be a little redundant as Ms Sandals has covered off much of it in her question, and in responses from the GTAA and Bruce Power. That's really where my question is going to be directed since I had some experience with the nuclear business in my former life. Each of those organizations in particular operates under federal jurisdiction. As I understand it, their responsibilities for emergency management on site fall under legislation that would have some federal control, and their responsibilities don't extend into the community. It's site responsibilities.

I suspect that the GTAA is a little bit different, because you have 27 million people coming through the facility in a public sense, whereas the nuclear facility, quite frankly, likes to restrict the public, or it doesn't

overly encourage the public to be on their sites, save and except for tourists. So they're a little bit different in their business that way.

I'm familiar with the degree of mutual aid or community engagement. Again, it may be more so at the GTAA. Because of the interactions and the public engagement, the police and fire may be more readily on site than with nuclear organizations, where more recently there have been agreements with police departments post-9/11 and with local fire departments in beefing up the fire response on site. But I don't think there is much happening in the nuclear for off-site support for emergency fire response, as an example, and maybe Mr Saunders can help with that. This may be something Mr Bishop can comment on as well, because this whole stakeholder engagement issue is one that remains important.

Under the legislative framework that exists, particularly for the GTAA and Bruce Power, are there any powers, any legislative authorities that you have federally that make your job easier in responding to emergencies that don't exist at the provincial level and that, if enhanced provincially, would make our job easier in managing emergencies of any nature in Ontario?

Mr Saunders: I'm just trying to start at the top. Yes, we are governed by the emergency legislation within our licence under the Nuclear Safety and Control Act. That act does require us to be able to respond on site, but it also requires us to have an agreement with Emergency Management Ontario, in our case. So the emergency response plan we have is not only approved by the CNSC in Ottawa, it's also accepted by Emergency Management Ontario. Within that plan in terms of mutual aid in a nuclear emergency, it's a very sophisticated response, and we already have in place a number of agreements with the province as to how we would support municipalities in the province to do that. So that part is well taken care of.

I think if you're looking at a simpler solution in terms of would we respond to a house fire on site, for example, the answer to that is no, because as an industrial employer we really have no right to direct our people to put themselves into harmful sorts of situations. We could not send a fire truck and a fire crew out to respond to a local fire because they're employees [*inaudible*] and our legislation doesn't give us any authority. We have no protections under the act for insurance risks and so forth. So we wouldn't do that.

Obviously when you're in some state of emergency, you look at those sorts of things and you make some decisions. It would be useful if there were ways that the province could categorize those people so they would indeed be able to help out in an emergency and be protected in some reasonable way.

Mr Arthurs: In the event of a declared disaster of some sort.

Mr Saunders: That's right. Indeed, I don't think we want to get into responding to house fires, because we staff our site to be able to meet the requirements of our

operating licence. We couldn't be pulling people off shift and sending them off-site on a routine basis and still be doing that.

We do have mutual agreements with the fire associations for provision of equipment. We do have some pretty sophisticated equipment, and we frequently have redundant amounts of it. So in some circumstances, we can lend them equipment if they need it: trucks that fill air bottles for firefighters and those sorts of things, for example. We do have agreements that would allow them to use the fire equipment, but those are all voluntary. They're not mandated in any way by our licence. Those are just things we do as a normal member of the community.

Mr Bertram: At the airports authority, the biggest advantage we have is that we are mandated to exercise. By regulation, we must hold a variety of sizes of exercises a year. Scott can correct me, but I think it's 12 exercises: three large, two medium and a couple of desktops sort of thing. We're mandated to do that every year in a variety of different scenarios.

So I think it would be helpful if—and when I was talking about standardization, it's that sort of thing: to cause the other players in the community to come to the table and almost—"force" is probably the wrong word—encourage them to participate. They do locally, there's no question of that, from an airport point of view. But on a broader scale, there's no requirement for them to test their own plans. We seem to be testing our own response in isolation. We have all the players at our game, but they're not practising on their own, which I think could probably be improved.

We don't go to house fires. That's not the type of equipment we have as a specialty. But we do respond more frequently than you would think to petrochemical types of fires, just by the nature of our equipment. We do respond, whether it's the Downsview airport, the Brampton Flying Club or the Burlington airport that burned a couple of years ago. It was our fire trucks that went down there to put out that fire. So, yes, we do respond, whether or not we have a formal agreement with them. It's just the proper community thing to do.

It's not only the fire department. We also loan our explosive-detection canine unit to the police—both Metro and Peel, Halton and Hamilton—in the event that they have a bomb threat and that sort of thing. That's not done through legislation or mutual aid, just through good citizenship.

The Acting Chair: Mr Bishop, do you want to comment on that?

Mr Bishop: I'd like to further comment on what Enbridge would do. During the power outage, for instance, a lot of CO detectors were alarming all over the place with the loss of power and air conditioning. High humidity conditions caused some of these CO detectors in homes to start alarming. At the time, we did make the offer to at least one or two of the fire departments that we would respond to those calls they were receiving through the 911 system. So we would definitely participate to the

extent that our resources and expertise would allow it. I don't know if that helps.

1100

One thing I wanted to mention, though, as far as a mutual aid thing is concerned: Since the gas utility structure has been changed in Ontario we're no longer providing the retail services side of it; we no longer service customer appliances and parts exchange and appliance sales and so forth. In the Peterborough situation, we were able to ensure that our system was fine, that everything was fine with the meter at your house, but beyond that, we're not able to now provide the service within the house. That's all done by the dealer community. Direct Energy is a major player, and a lot of the local dealers that sell and service appliances and so forth were involved.

In a large emergency, the issue becomes coordination of that activity. Prior to the debundling, we would have managed that totally—ourselves and Union Gas and so forth. Not only would we look after the street side, we'd also manage the customer interface. At this particular time, it's left to the dealer community to resource parts, materials and so forth. I guess there are some competitive issues that come into play; they may or may not want to co-operate totally. If that's your competition out there, you don't necessarily want to share lists and so forth.

But I think going forward somebody needs to have the power—like the TSSA needs to be able to take that authority on—or the Minister of Energy, in consultation with the utilities, needs to be able to ask if we could manage that. It may be advantageous that we would somehow coordinate it and appoint certain sections of the city to certain dealers and really manage that whole restoration point of view, especially if heating was involved. I just wanted to point that out. That is something that has changed within the past few years. You are now relying on the dealer community to bring those appliances back into operation.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): My question is to the independent business federation: a very good presentation and the information here is quite clear. In your presentation you made comment about border issues and challenges relative to the border related to small business. I wonder if you could expand on that a bit, about the challenges, the magnitude and how we can cope with those challenges. First of all, I know about BSE, and that has been front and centre in the agricultural sector. You've arrived here with small business. Could you tell us a little bit more about it?

Ms Andrew: Thank you, Mr Brownell, for the question. I should have clarified that among the range of small businesses we represent, we also represent agribusiness. We have about 2,300 agribusiness members in the province of Ontario, including about 800 beef producers, cattle producers, so they are fully affected by BSE and the border stoppage there.

In my earlier remarks, I was referring more to the aftermath of 9/11 when the border was very opaque and

we got involved early on with the border coalition. This was a national effort. We worked with other business associations and others on that and gave input to some of the programs that emerged, things like the FAST program and the other programs to get business carriers through the border more quickly.

It's a bigger challenge with the small business sector. Of course, the big companies have their shipments, their personnel and their electronic devices and much more easily can have all of the validations done away from the border point itself. For small businesses, many of them were being held up at the border, so we had to get involved and try to make sure that there was some provision for them. At the same time, we tried give our members some information on how they could do a better job getting ready for their border crossings. That's this piece that you have in your kit, *Securing Your Business*, a border checklist for them. So we've had a lot of activity there.

We've also dealt with our national authorities and American authorities, the US ambassador's office and so forth, on trying to improve border flow of some of our key products, whether it's softwood lumber, beef products and so forth.

Mr Kormos: We've heard from Mr Bertram and others who spoke of the potential for goodwill-generated co-operation with public, front-line emergency personnel. Some of this drift has been occurring yesterday as well as today.

Speaking on behalf of the NDP, we are adamantly opposed to any concept that would assess our capacity as a province or in the public sector to respond to emergencies by auditing and including the private sector as well. If we're going to talk about meeting public responsibility in terms of front-line emergency personnel, we have to adequately staff those public sectors that do that work.

I encourage the committee to hear from, let's say, representatives of the Police Association of Ontario or the professional firefighters' association or OPSEU or CUPE paramedics, and if they disagree with me, I perhaps might be persuaded. But for the moment, I want to make it very clear that I think it's very dangerous turf to start treading on to talk about the privatization—because that's what's being discussed—of emergency response in the province. That includes the quest to, let's say, override collective bargaining agreements in the course of calling upon people to respond to emergencies.

To legislative research—and again I apologize for yet another burden added to the huge list of tasks that have been imposed on you. You see, one of the problems is that we haven't even adequately staffed this committee from the public sector personnel available to us. The Chair might inquire into that, with the assistance of the clerk.

With respect to Peterborough, and I didn't expect Mr Yakabuski to have all the data and minutiae here with him today, he spoke of some 4,500-plus claims so far out of the most recent flooding. I'm just assuming that one

claim is one claimant, although there perhaps could be claimants with more than one claim. What I'd like research to get, and I'm sure Mr Yakabuski will unlock any doors he has to to make sure you have access to this, is from the last round of flooding. When was that? Was that 2002?

Mr Yakabuski: Yes, it was.

Mr Kormos: I would like to know, and maybe the committee would like to know, how many claims flowed from that, and then, as a result of those claims, how many policies were diminished in their coverage or outright terminated, cancelled. I'm sure the industry has that information.

Similarly, I'd like to know—and your conversations with the industry would help us learn this—what standards the industry will apply to determine whose coverage will be diminished this round as a result of claims being made or whose coverage will be terminated. Mr Yakabuski indicated it was premature to talk about terminating coverage. That implies that at some point it will be the time to talk about terminating coverage, so let's just anticipate that.

I also would like dearly—and I know Mr Yakabuski told me he's going to call me back with information about my community and how the insurance industry rates my firefighting service. I'm not interested so much about how close I am to a fire hydrant; I'm interested in the method the industry uses to assess the adequacy of a firefighting service and how much coordination there is with the standards utilized by the fire marshal's office. Again, you understand that my bent is going to be talking about adequacy of staffing and adequacy of equipment in any given municipality, because that's where the pressures are right now. Municipalities, of course, because of the eight or nine years of downloading and no relief in sight other than the prospect of getting revenues from red light cameras, are under incredible pressure in terms of the adequacy of staffing of firefighting services, along with policing. So I'd really like the complete package of how the insurance industry assesses, and then applies their assessment evaluation of firefighting services, and what input they have into that community, if any, in terms of notifying that community that people are paying more in that community, presumably because their firefighting service sucks.

1110

Ms Broten: I wanted to respond to the comments that Mr Kormos has made.

Mr Kormos: I knew you would.

Ms Broten: I'm sure you did. Certainly, I don't think anyone around this table believes—perhaps Mr Kormos does, but he may not even—that we're talking about the privatization of these services. What we're examining, all of us, each and every day when we're here, is how this province can best deal with an emergency. In that emergency, we are talking about extraordinary circumstances, not your everyday occurrences.

As we invite the private sector to come to the table today, it's in a sense of, during those extraordinary

circumstances—during floods, during 9/11 and all the other events that we have really had to learn from in North America and, in particular, in Ontario—over the last number of years, how can we best work together in an effort to make sure this province is safe during those extraordinary times and also make sure that the folks we call upon to assist the province, if that is the case, by way of whatever mechanism, are also safe and we know what we would be asking those individuals to do. It's no different than the issue that OVERT and the voluntary sector raised before us yesterday with respect to their needs when they come forward to meet a challenge we're all facing.

I simply wanted to respond to that issue and to, again, highlight for everyone here to remember that we are talking about those extraordinary things that happen in this province that we need to prepare for but that we don't live each and every day.

Mrs Sandals: I'd like to go back to Enbridge and the issue of the involvement of the gas utilities and, I presume, other private utilities by extension. I'm thinking of perhaps somebody like Bell, where you're dealing with telecommunications infrastructure in emergency planning.

Now, did I understand you correctly, Mr Bishop, to say that the way in which Enbridge found out about the most current Peterborough flood was when somebody turned the TV on in the morning?

Mr Bishop: Yes. One of our general managers mentioned it to me in the parking lot walking into the building at about 7 in the morning. That's the first we had heard about it. I went down and looked at our dispatch office right away, because usually they're a pretty good window of what's going on, depending on how many calls have come in through the call centres. They'd only received two calls on flooding. So without further knowledge, we were just taking that as a routine thing, maybe that one intersection had been flooded out with a backed-up sewer or something, not having any sense about the devastation that was actually occurring there until we started seeing the news reports coming in on TV, and then we assembled our response management team.

Mrs Sandals: Do you know if your local office was notified of the flood?

Mr Bishop: No, we'd sent—

Mrs Sandals: Or the process should be that the provincial response team is notified anyway?

Mr Bishop: For something that big, yes, and it's the EMO, the community officers. I spoke to one of them who was assigned to the Peterborough county emergency command centre, who paged me at about 8:30 that evening. We still had our command centre up and we started having some dialogue, because although we didn't have many customers in that particular region—they'd be mostly propane and so forth—they were looking to ask what they should do from the public's point of view to make it safe and so forth. So I was able to say that, at least with gas equipment—whether it's propane or natural, it's very similar—here's what we're

instructing through our call centres and press releases that homeowners need to avail themselves of.

Mrs Sandals: Because I presume that, in a situation like this where there's flooding or some other natural disaster, the potential for breaching the integrity of the gas lines could, in itself, create a secondary disaster, so to speak.

Mr Bishop: Big time. One thing that concerned me right off the bat was municipal crews or private individuals or contractors were trying to clear drains and so forth. If they're out there smashing around out in the ground, that could affect our pipelines. If you breach that, you can get a flood into the lines and really flood out a whole section.

That very thing just happened to us at Oriole Parkway and Eglinton a couple of weeks ago, where our pipeline system got flooded out. So that was a major concern to us right off the top. But to be able to dialogue with somebody, to say, "Hey, be careful when you're out there"—we've sent extra resources up there just to be able to provide emergency locates of where our plant is to protect against that kind of thing.

I should mention there was comment made about these being extraordinary events. In the normal course of events, in the normal, routine things that happen day to day through Enbridge Gas, such as gas leak reports and fires, where fire departments and police departments call upon us, that all tends to work very well. We have direct lines from their dispatch offices. We have direct numbers into our dispatch offices. We maintain three for some continuity purposes. That all works out very well on day-to-day stuff. It's the big stuff where I'm concerned that they sometimes fall through the cracks.

Mrs Sandals: It may simply be the perception that, in the case of Peterborough, we're dealing with water, not gas, whereas in a more localized incident, it occurs to people that this is a gas issue, so they call you. But in the bigger picture, people don't necessarily, in the panic of the moment, think about who else may be involved.

Mr Bishop: Or needs to be involved. We could put contingency plans in early to mitigate some of the effects that could have happened in certain isolated sections and so forth. It's just really good practice and good planning to have that. Had we been able to get in and be a party, even if it was through a conference call or something that all major stakeholders would be involved in—even if it's at 8 in the morning that we were called—at least we can start to offer up what resources we have available or, if we need to evacuate our equipment or materials to continue the fight, so to speak, later on, it just affords us that opportunity to do so.

Mrs Sandals: With respect to the current legislation, what, if any, requirement, in both the planning for emergency and the actual management of an actual emergency, is there to involve utilities?

Mr Bishop: I think if we're actively involved, or at least notified up front, we can at least give the municipality or the province some expertise around what they need to be considering and what the impacts are going to

be. The information and the quality of information that incident commander has to base his decisions on is vital.

Mrs Sandals: But there's currently no legislative requirement to involve you, either in local planning or emergency management, that would be—if it happens locally, it happens, but there's no requirement that you be involved. Is that what you're saying?

Mr Bishop: I've got to be careful, because I'm not a lawyer. Looking at the Emergency Management Act, it looks like there's provision in there, but it's probably fairly loose because we'd probably be referred to as "other" or something like that within the act. You just might want to clarify that major utilities—probably Hydro One, OPG, Enbridge, Union, TransCanada and so forth—would be major players. It wouldn't matter what kind of an emergency, whether it's an earthquake or not. Although it may not be readily apparent, there are going to be issues of gas distribution. Just about every type of emergency could impact us directly or indirectly.

Mrs Sandals: You also mentioned in your earlier comments around the sharing of scarce resources—and I think we touched on this a little bit in rationing. Perhaps this isn't your issue exactly, but one of the things that occurred to me when we had the hydro blackout, because I happen to live in a community where there was one gas station in the entire town actually working, is that one was getting into issues of who needed gas most—for example, responders or people who are in some way involved—versus who got in line first. Is that the sort of issue you were raising about access to resources?

Mr Bishop: I'd hate to come down to fisticuffs at the local gas station, but what I had in mind was where the province could direct the fuel industry, such as the Shells and PetroCans and so forth, to make their tankers available to refill or go to a certain depot where all utilities could come in and their emergency personnel could fill up.

1120

Of course, in anything like the power outage, we would suspend all operations that were unnecessary. We only want to maintain emergency vehicles. But it goes beyond just your emergency trucks and so forth, because you also have key people who are involved in response management who do not drive company vehicles, but you need to have them available. The night of the power failure, for instance, with our own little gas tanks that we have on-site, I sent our security guard out there to ration what everybody got, X number of litres to an operations vehicle and even to some of our key people, to say, "I need that manager back in the morning. Better give him 25 litres of fuel." So it gets a little more involved as well, but I think it's something we need to look at.

Mrs Sandals: So this would come under the provincial powers to ration or control use of resources that people need to respond to the emergency.

Mr Bishop: Exactly.

Mrs Sandals: OK. Thank you very much.

The Acting Chair: I just had a question, Mr Bishop. In terms of your protocols for rationing and deciding

priorities in terms of who gets fuel and so on, that's determined essentially within your own corporation?

Mr Bishop: Essentially.

The Acting Chair: There's no government initiative that's giving you that direction.

Mr Bishop: I'm not sure, to be honest, sir.

The Acting Chair: The question then arises, for instance—

Mr Bishop: It's just a little bit outside of my scope. I can speak to how we would do it; I'm not sure how that's approved. It's probably the Ministry of Energy—

The Acting Chair: Could you get back to us, to see how that was approved or how that was set up?

Mr Bishop: Sure.

The Acting Chair: Then it gets back to the scenario that William Thorsell of the Globe and Mail put forward, that there's a 30-day blackout in the wintertime, and who decides who gets power from Bruce Energy or who gets natural gas to heat their homes. How is that determined? For instance, what would happen to power rationing? Is there a protocol there? Is that by federal statute? I'm not sure how that would work.

Mr Saunders: There is a protocol, but it's through the grid distribution system, not through the power producers.

The Acting Chair: IMO would do that?

Mr Saunders: That's right, and they do have a protocol about who comes off first. They have an interruptible sort of thing. I think there were some issues in the August 14 blackout about how they established who should get power first and the like. I know there has been quite a lot of work going on. I don't have any direct knowledge of it. The power producers like Bruce Power and others supply to the grid and the grid takes it away, so we don't really have any control over where it goes once it leaves the site. But there is a control centre and it's well established who gets power first in the province now. When you get to the point where you simply don't have enough, they have rotating blackouts and other issues where they can move it around. But I can't speak in detail to it, because I'm not familiar with that.

The Acting Chair: The clerk mentions that someone from IMO will be coming along with the Ministry of Energy representative and can maybe answer those questions.

You mentioned before this gas rationing that was happening. Most of us didn't realize that our gas pumps were operating on energy, a supply of electricity, electronically. Who or what authority decides who gets gas if we're running out of gas for vehicles for the general public? I don't know if anybody around here has ever thought of that scenario. Have your companies ever thought of that, the ability of your workers to get to the bank, if bank employees or Enbridge employees or Bruce Power employees can't get gas? I'm sure a lot of your employees at Bruce come all the way from Sarnia, those who work up in Kincardine. Who decides who gets the gas to get to work?

Mr Saunders: We don't have any control over the gas stations. We do have an emergency transportation service

plan, which uses buses to do that, so we can help with that part. Much like Enbridge, we do keep a stock of fuel on site that will last for some period of time. It won't last for an extended blackout. So our plan is mostly around providing bus service to those communities. Of course, then we're focusing strictly on essential workers. We're not trying to bring everybody in; we're just trying to bring in those people we need to keep things going. So locally, we have that plan in place.

In an extended situation, however, where our local supplies start to diminish, I'm not aware that there's anybody who actually tells the local Esso station or whatever who should have priority. Certainly from not only the generation side but from the line side, the repair crews and all those people who need to get out, if you're in an extended situation where your local tanks are not going to be sufficient, there ought to be some method where you prioritize those vehicles that are going to help you restore the normal services. I'm not sure that exists today. It wasn't apparent on August 14, at any rate. As you say, if you could find a station open, it was whoever could get in line that got the gas.

The Acting Chair: I'd like to ask the bankers' association: During the August 14 blackout, the TTC was shut down. Luckily, it was the middle of the summer. What happens if your workers can't get to the banks? Do you have an emergency transportation plan in place for key personnel to get to the key areas to deliver those services?

Mr Pattison: I think the CBA per se does not, but the individual institutions certainly look at things like carpooling. Our business continuity plans will prioritize what needs to be done and what can be left in extreme situations. People can work from home. More and more, that's becoming an option. So we do look at all these on an individual financial institution basis. We're all looking toward working around these situations. It's not particularly a coordinated situation through the CBA.

The Acting Chair: Next, MPP Zimmer had a comment or a question.

Mr Zimmer: Mr Yakabuski, earlier in answer to my questions about reserve funding or creating a fund for disaster relief, I think you indicated that you had prepared some documents or a position paper or correspondence on this issue. If that's the case, I wonder if you might share that with this committee by way of sending it in as an exhibit.

Mr Yakabuski: Yes, we certainly have had some correspondence with other levels of government in the past which we'd be prepared to share with you.

The Acting Chair: Just a point of clarification on that. You mentioned a tax-free situation in relation to your comments on that fund. Could you just comment on that briefly?

Mr Yakabuski: The idea is, how do you establish a fund and allow this fund to grow as quickly as possible so that it can be of use? The best way to do that is to exempt it from taxation. The gains that might come from investing these funds would not be subject to taxes. That

way, the fund would be allowed to grow much more quickly. This is one of the proposals that we have suggested in the past could be used to develop some kind of permanent funding mechanism for disaster recovery in the future.

Ms Andrew: Mr Chairman, you said we could ask questions. I'd like to pose one. Mr Yakabuski referred to disaster relief. That's the aftermath of an emergency. My question is, do you feel that we've gone far enough? You mentioned in your remarks that it's important for governments to know what the insurance industry covers in order for them to know where they need to step in and offer disaster relief. Do you think that's clear enough currently, to policyholders initially, who have insurance policies with your companies, to know what the coverage is, and then of course, for what isn't covered, what protocol is there for governments to come forward and fill the breach there? Is this mostly discretionary at this point, and is this what we're talking about this fund dealing with?

Mr Yakabuski: No. The fund is meant to deal with—look, you have a community that has suffered a large disaster costing hundreds of millions of dollars. Usually there are infrastructure implications. Some public infrastructure has been destroyed. Some public infrastructure has to be rebuilt. The money has to be there available and quickly in order to get this done. There's not a lot of time to bicker as to who's going to pay the bill. What we suggested, because it has been used successfully in other jurisdictions and other countries, is that if you have some kind of disaster fund, these decisions can be made more quickly. That's what I'm talking about there.

1130

With respect to the liaison between the government and the insurance industry, sometimes that takes place well and sometimes it doesn't take place as well. Often it depends, from jurisdiction to jurisdiction. The best way to ensure that it takes place is to ensure that there is a clear and permanent liaison line, for example, in this province, between ourselves and the Ministry of Municipal Affairs and Housing and whoever else is making decisions with respect to disaster relief.

With regard to the issue of people knowing what is or is not covered, that's a perennial issue that we all have to deal with. First of all, it means that homeowners and businesses have to take a greater interest when they're making insurance decisions as to what is covered and what is not, what they want to have covered and what they do not want to have covered. They've got to talk to their insurance representative, be it a broker or an insurance agent, about what coverages are available and at what price. We've all got to work more closely together to ensure that these issues are addressed and that the right decisions are made with the right information. I fully agree with that.

Ms Andrew: Just to clarify, the fund you're talking about is only for public infrastructure restoration, and you also mentioned putting a priority on earmarking those monies for future prevention. So this fund is not to

deal with shortfalls in insurance coverage or other individual or business losses. You're not talking about that.

Mr Yakabuski: Well, no, what we've suggested is that the fund be available to deal with recovery. Recovery means responding quickly to a disaster and making sure that the infrastructure that has to be replaced or improved is going to be replaced and improved at the earliest possible moment. That's the key challenge that we often forget about after a disaster. Because what's going to happen when a community is hit by a disaster, if the right decisions are not made with respect to infrastructure, is they're just going to get hit again and it's going to cost all of us a lot of money.

We have to be able, of course, to use our taxpayers' money responsibly and accountably. If we can mitigate the damages that communities are going to suffer, we are all going to be better off and we're all going to be better prepared.

Ms Andrew: So then I would say we agree with the notion of monies being dedicated to public infrastructure relief. If you look at the SARS report that our organization did, in figure 5, on the measures to help affected businesses to recover, the notion of direct financial assistance is down the list in terms of where our members felt that was appropriate. It did garner some support, but there is always the difficulty of giving direct financial assistance. I would think, similarly, with residents and homeowners, direct assistance could be seen to step in place of the original insurance coverage in the first place.

Mr Yakabuski: And that, we're definitely not interested in doing. The reality is that we have a service to offer and that's what should take care of most of the needs. Disaster relief should only be directed to those people who do not have insurance available to them. That's the principle.

The Acting Chair: By the way, there are a couple of interesting illustrations of this very important discussion. One is that in our last budget, as the government, we included some money to upgrade sewer and water delivery systems. In some circles we were criticized roundly for not putting money directly into so-called treatment in hospitals of diseases related to water not being up to standard. I think that's a perfect illustration where the government felt we had to do something to prevent that potential disaster—Walkerton or others—from happening again down the road. We could save a lot of money by investing in that infrastructure up front. That was one of the reasons we did that.

Secondly, another example: There was a small community I visited somewhere in eastern Ontario that had an allocation of infrastructure money. At the local level, they had a choice between putting it into a new recreation complex and soccer fields or upgrading their sewer and water delivery system. They chose to put the money into the new recreation complex. The majority of citizens actually supported that initiative. Meanwhile, the sewer system and the water delivery system are still 100 years out of date, yet they have a brand new soccer field and community centre. Those kinds of decisions and choices

are being made as we speak by cities, big and small, and governments, big and small.

It's very difficult to make those long-term investments that end up mitigating—because, as we all know, we're always going to have these disasters, in Florida etc. On the other hand, there are some initiatives governments can take. I think the public has to appreciate that and work together to say, "This fund is for prevention," whether it's for maintaining a certain infrastructure or allowing an infrastructure to meet some certain future need. It's a tough sell sometimes to do that.

Ms Andrew: Certainly not among our members. The small and medium-sized business sectors put high priority on investing in productive infrastructure. In environmental surveys we've done, water quality is high. Our members are cognizant of the need for all of those basic services to be up to standard.

Mr Zimmer: Chair, could I ask Mr Yakabuski to also include those jurisdictions where there is such a contingency fund, how the fund operates, how it's managed and how it's funded?

The Acting Chair: Yes. That would be good.

Unless there are any further questions and comments, I would like to thank everyone for very tangible and meaningful input into this process, as we are looking at all government statutes to try and see how we can better coordinate or redefine them or develop new ones that will help protect the citizens of Ontario in case of another disaster. As someone said before this committee, it's not a matter of if there's going to be another disaster; it's a matter of when.

I think we have a serious obligation here, as citizens and as legislators, to try and find out what we can do to mitigate these and ensure that, whether it be the private sector or the public sector, the government gives the tools to work together in a very effective, focused way for the betterment of the people of Ontario, who through no fault of their own get into some kind of unfortunate situation that is, it seems, inevitable sooner or later.

Thank you so much for the input and taking time to be here. If you have further information you want to forward to the committee, please do so. We will be continuing our deliberations over this week and the following week, and I'm sure your input will help shape the final product or products we have. Thank you very much.

We'll recess until 1 pm.

The committee recessed from 1142 to 1306.

The Acting Chair: I'd like to call the standing committee on justice policy to order. I would like to welcome our special expert panellists and presenters. I would just like to give you a bit of background and the format.

As you know, this committee has a mandate to review all government of Ontario statutes as they relate to emergency powers as they relate to emergency measures and emergency preparedness. This morning we had a panel on the private sector. We had the Canadian Bankers Association, Bruce Power, the Insurance Bureau of Canada, and we're having a health panel; Dr Basrur is going to present tomorrow. We've had Dr Young, the OPP, the fire marshal, EMS. We thought it would be

helpful to get a municipal perspective on emergency readiness, given that municipalities are front-line deliverers of emergency services in times of crisis. So I want to thank you for being here.

The format is that we have 10 minutes per presenter to make an opening series of remarks—you don't have to take the whole 10 minutes. After the 10 minutes, you'll be asked questions by members of the Legislature, and after those questions there is a forum where there can be more questions or comments made by members of the Legislature—the MPPs on the committee and myself—or you can pose questions yourselves, if you like, on something you want clarified.

Just to show the continuity, I know that one of the presenters this morning from Enbridge mentioned a prototype plan that exists for emergency preparedness in the city of Sarnia, and we mentioned to Enbridge that we were going to have a presentation from Sarnia. So it all certainly connects and helps us try to devise ways of either strengthening legislation or reshaping it or perhaps coming forth with new legislation to make Ontario better prepared in terms of emergencies. We're looking for input, suggestions and comments based on your experience from your jurisdictional background to help us in this endeavour.

CITY OF SARNIA

The Acting Chair: The first presenters are Cal Gardner, Sarnia emergency measures manager, and Terry McCallum, director of community services. Would you identify yourselves at the beginning, if possible, because all this is taken verbatim for Hansard, so you can have a copy, word for word, of this committee meeting or of all the committee deliberations over three weeks. It will be available, and I think it's a good resource. So would you help us by identifying yourself, and you will be so noted in Hansard.

Mr Terry McCallum: I'm Terry McCallum, director of community services from the city of Sarnia. I'm also chair of the city's emergency management committee. Cal Gardner and I will share these few minutes. Cal is manager of the city's emergency management committee as well.

I'll make some comments in general about the city of Sarnia and then ask Cal, perhaps, to speak to the concerns. Just for clarification, Mr Chair, in this 10 minutes, are we to go through our concerns as well or—

The Acting Chair: Whatever you want to present in the 10 minutes. As I said, there will be time afterwards to go beyond that. It's really up to you.

Mr McCallum: Thank you. I'll just make some general comments about the city of Sarnia and ask Cal to speak to the concerns with the legislation specifically.

Sarnia, of course, is located on the most westerly side of the province and has a population of approximately 70,000 people. We're one of the busiest border crossings for dangerous goods in Ontario. Over 80% of the chemicals and hazardous goods in Ontario are either produced or transported through the city of Sarnia.

Sarnia also has the second-largest international rail yard in Canada. The twin bridges and the rail tunnel expedite large quantities of hazardous goods to the United States. The importance of the tunnel in Sarnia is that it cuts transit time to the Midwest by approximately 24 hours. Hazardous goods are not allowed to cross in the city of Windsor—and the city manager of Windsor will speak to that more fully—and as a result the city of Sarnia, with the twin bridges and the rail tunnel, bears the brunt of over one million trucks annually and over 5.5 million cars crossing the bridge on an annual basis.

The St Clair River is also one of the busiest waterways in the world, with over 5,000 ships annually, many with hazardous goods.

As a result of the tremendous amount of hazardous goods that are both produced in and transported through the city of Sarnia, in the early 1950s we created two organizations. One is CVECO, the Chemical Valley Emergency Coordinating Organization. This is really a mutual aid organization between the city and the industry. In the event that there is a release or some emergency, we can rely upon the other plants or the city to assist on an individual basis. CAER, Community Awareness and Emergency Response, is an organization that works within the city of Sarnia to advise city residents on how to deal with emergencies.

Sarnia also has one of the largest, if not the largest, storage of natural gas in all of Canada. All these situations, including the supply of fuel to NASA, give some indication of the types of emergencies we must be prepared for in the city of Sarnia.

We do take some pride, I guess, in the fact that we feel we have a good emergency plan in place. We find, however, that when emergencies exist, no plan is perfect. We try to improve it as we proceed.

At the present time we're dealing with trying to set up a reception centre program in the city of Sarnia. The Rotary Club assisted us for a number of years, but they no longer are able to provide that service. The county of Lambton looked at involving the Red Cross on a contract basis, but that was not successful at the county of Lambton. As a result, Mr Gardner and I have basically been left with the responsibility of developing a plan for reception centres. We have talked to the Salvation Army, and they appear to be interested in assisting us. We hope to have this plan in place in the next two weeks and present it to council.

That's a bit of a summary of the city of Sarnia, the type of exposure we have to hazardous goods and the fact that we do feel we are well prepared—I would say well prepared but not perfectly prepared—to handle emergencies.

Mr Gardner perhaps can speak to the concerns with the legislation.

Mr Cal Gardner: One of the issues we're faced with is that the Blue Water Bridge is not in the municipality of Sarnia; it's in the village of Point Edward, with 2,200 people, and in all likelihood we're the ones who will be dealing with it with police, fire and services.

The railway tunnel: The second-largest international rail yard in Canada is on CN lands, but, again, the responsibility for responding to that always comes down on Sarnia fire services and the Sarnia police service, with no funding or support for those federal lands.

We also have Aamjiwnaang First Nations, which is one of only two reserves within the city limits and, again, we provide policing and fire services to that community as well, again with no federal assistance.

One of the concerns we have is that the legislation seems to be unclear. For example, we were told that the Ministry of Community and Social Services is responsible for reception centres but, at the same time, Emergency Management Ontario is calling upon the city to have reception centres. What Terry McCallum spoke about was the Red Cross coming forward to have contracts with municipalities. That's a financial burden because they're basing it on per capita, per person annually for standby time. So that raises the issue that we're required to have reception centres, which we always have in the past, but now, with the new legislation, they're wanting us to jump through an awful lot of hoops, with no cost recovery.

The other thing I think we're concerned about is that the board of education and the hospitals need to be aware that their emergency plans have to dovetail with the community they reside in, because it's the community that's going to be responding. I'm not sure if that's clear in theirs. Although all the different ministries have been told to have emergency plans, we need to reinforce that they have to dovetail with the community's emergency plan.

The Acting Chair: Before we go on to the next presenters, could you just explain "reception centre" for us?

Mr Gardner: In the past, if we ever had to evacuate, we had to have shelters in place. On a regular basis, our roads are blocked with transports. So we are required, under Emergency Management Ontario, to have reception centres available to house people who are without homes or evacuated or stranded in the community. August 14 was one issue where we had transits coming through Michigan who could not find gas, and hotels booked up fast, so we had to open up reception centres.

But right now, Red Cross is going across Ontario trying to sign up communities to pay for standby time. That could present a huge issue. My understanding is that Sault Ste Marie and a couple of communities in Lambton county have signed up. I've talked to the other large communities like Niagara, Kingston, Windsor, London and so forth, and they're concerned that if we set a precedent, who's going to be paying for the standby time? It could come back to haunt us.

The Acting Chair: That's a good explanation. That's very helpful. Thank you.

CITY OF WINDSOR

The Acting Chair: Next, from the city of Windsor, is John Skorobohacz, city manager at city hall.

Mr John Skorobohacz: Thank you, Mr Chair, and members of the standing committee on justice policy. I appreciate the opportunity to be here today to present the city of Windsor's concerns relative to emergency planning and preparedness.

First of all, I think it's important for you to understand some of the challenges that municipalities have faced over the past decade, relative to a variety of issues that are impacting on our ability to provide those services.

As you'll all recall, we've seen escalating costs through the continued downloading of a variety of different programs and services, from both the provincial and federal levels. Examples of that include the issue of physician recruitment, which many of our municipalities are currently addressing through the tax base. We also have the increasing cost of ambulance services. Those costs are obviously causing very significant pressures with regard to our taxpayers and our ability to meet what I would term ongoing core services. We also have to recognize that there's a significant deficiency in the existing infrastructure, and that deficit continues to mount on a regular basis. The ability to manage and maintain our existing infrastructure also is a challenging cost to us in terms of our ability to meet our core services.

On top of that, we're looking at the increased demands of globalization, competitive economies, challenges with regard to societal demographics and the changing of those demographics, and the immigration and integration of new residents in our communities. Since 9/11, addressing those issues relative to global terrorism and the ultimate cost at the local level is also significantly impacting on our ability to deliver those core services. So we appreciate the fact that you're taking a look today at the costs of delivering emergency preparedness programs and those services.

1320

As far as the city of Windsor is concerned, obviously we're located in southwestern Ontario, with a population of just over 200,000, but the submission that you have before you today is a joint submission by the city of Windsor as well as the county of Essex. Combined, our populations are close to 500,000 and, as a result of that, I hope the submission covers off most of the concerns that you're going to hear from other municipalities as well.

To understand our particular situation, you have to understand the crossing points and the border community issues that are relative to our circumstances. The crossing points that I refer to are a privately owned and operated international bridge, a tunnel owned jointly by the cities of Windsor and Detroit, a privately operated barge operation which does allow for the transfer of hazardous waste or chemicals across the border and, finally, a rail tunnel.

Current efforts are underway to identify a new border crossing in southwestern Ontario to address those challenges faced by our community, with upwards of 16,000 commercial trucks passing through and along our municipal infrastructure on a daily basis. The border presents

significant challenges to our community on several fronts as it relates to addressing emergency planning and preparedness. Specifically, the challenges that we face are: the financial consequences and costs associated with delivering those services; training, skills development and equipment relative to providing emergency planning and preparedness; the protocol relative to consistency in approach and coordination; the support of community agencies and networks, and you've already heard some of the impacts relative to the Red Cross; and finally, the last issue that I want to talk about is that of a federal-provincial approach to a coordinated effort with regard to emergency planning and preparedness.

I haven't gone into the exact details of my submission, the written submission that you have before you, but I'd be pleased to answer any questions relative to the written submission and any of the comments that I've made. I just wanted to put into context for you some of the pressures that municipalities are, in fact, facing on a daily basis as it relates to delivering their core services.

Thank you, Mr Chair.

The Acting Chair: Thank you to the city of Windsor.

CITY OF OTTAWA

The Acting Chair: The next presentation is from the city of Ottawa's John Ash, manager, emergency management unit.

Mr John Ash: Thank you, Mr Chair. Obviously, Ottawa being the nation's capital and the second largest city within Ontario, there's a certain level of complexity in managing that system from an emergency preparedness or planning standpoint.

Just to give you a little background, or its risk assessment, if you would, Ottawa is the third largest earthquake region within Canada, the second being somewhere up in the Arctic. So really, it's second to BC for population in that matter. Obviously, with the various rivers and canals, the risk of flood is quite high in that area, as well as Chalk River's proximity.

Through the blackout, the G8 and G20 summits and the ice storm, the city of Ottawa has taken emergency preparedness and management quite seriously, to the point where we've dedicated significant dollars and planning to prepare ourselves in the event of the inevitable, and we all around this table know that it's just a matter of time.

However, with the level of planning that we've done, certainly it's clearly understood that, as the world evolves and the level of incidences that occur such as 9/11, SARS, BSC or the blackout, emergencies or disasters are no longer isolated to small geographical locations. They're becoming province-wide or international in their scope. So there's obviously a need to have the ability to draw upon resources from the provincial level, probably on an ongoing basis. My colleagues have discussed how those funding arrangements would occur. I think as we evolve, it will be an ongoing issue or process that needs to be resolved.

The public expectation of what municipalities will provide for them in the event of emergencies has increasingly become heightened with a lot of media attention. As a result of that, it puts the burden on the municipality to put in place that support network and, with that support network, the funding that needs to go along with it.

I'm certainly encouraged that we're having these discussions and that we could potentially bring out a lot of the process-related issues. I know that, through Dr Young's group in the EMO office, they're putting together a provincial structure which will aid in communication and collaboration among the municipalities and the province, which is very encouraging. But as those talks go forward, I think what is going to be key is flushing out the process-related issues, because what is key in managing incidents is developing and maintaining those relationships as opposed to applying a function or a formula, if you would. So as I said, I'm encouraged these discussions are being taken forward and look forward to further dialogue.

The Acting Chair: Thank you, Mr Ash.

CITY OF TORONTO

The Acting Chair: Next, from the city of Toronto, is Warren Leonard, manager, office of emergency management.

Mr Warren Leonard: Thanks to all the members of the committee for this opportunity to address you this afternoon. My name is Warren Leonard. I'm the manager of the city of Toronto office of emergency management. That's under our technical services division in the works and emergency services department. I've been directly involved in full-time emergency management in the city of Toronto and the former Metro for over 16 years, since 1988.

I'm going to address some of my comments to the municipal role in emergencies. I'll start with those. When an emergency takes place, response is undertaken by the local municipal emergency response organizations. This includes the traditional response groups of police, fire, EMS and public health, but it also includes social services, works, parks and rec, buildings and inspections and, even more, it includes those non-traditional response groups such as labour relations, human resources and finance.

It's because municipalities deliver front-line services to the public on a daily basis that we're in the most practical and practised position to do so during an emergency. Policy or directives that come to us from the province or the federal level are implemented and operationalized at the local municipal level. This has been repeatedly demonstrated during SARS, the blackout and other events that have been mentioned this afternoon.

Since response to an emergency begins at our level, it's imperative the local voice be heard at the provincial and federal levels, because our services operationalize those response plans. So we appreciate being here this afternoon.

From a municipal perspective, we look to the provincial government to support municipalities in terms of training, equipment and other assets funding necessary to ensure that we are able to identify our risks, prepare our plans, and have sufficient properly trained personnel and the necessary equipment to protect the health, safety and welfare of our residents.

The current provincial legislation, the Emergency Management Act that came into force in 2002, now mandates municipal risk assessment, emergency plans, critical infrastructure identification, training and public education. A community framework has been developed by the province to phase in a comprehensive emergency management program. However, the accompanying regulations have yet to be published. Our first deadline is December 31, 2004, and I'm already well into my 2005 budget process.

There is also a marked difference in the nature of municipalities in Ontario, and a cookie-cutter approach will leave out the needs of somebody along that spectrum. Toronto, being in the sometimes unenviable position of being the largest municipality in the province—we have 25 million residents, and if you come in from outside, like many of us do, estimates swell to over an additional million people per day. If things happen during that time, those people are our responsibility.

Major fires, spills, loss of telecommunications, major events: There is a whole host of things that tend to be attracted to large urban centres, and we have most of those risks right here in the city.

We do have a comprehensive approach to emergency management, with an emergency management office—that's my office. We're charged with developing, maintaining and coordinating the overall program for the municipality. There is an emergency management committee made up of executive members, some of whom you heard from this morning. Others will be appearing later on, I understand. We have an emergency operations centre, of course. We have mutual assistance agreements with all our surrounding regions, and we have two special initiatives here: HUSAR, which is a heavy urban search and rescue team that's one of five proposed across Canada, and we have a CBRN—that's chemical, biological, radiological, nuclear—one of three in Ontario.

For our provincial linkages, on most of our emergency management issues we deal primarily with EMO, Emergency Management Ontario, but there's also direct contact between a number of our city divisions and provincial ministries. For example, Toronto Fire Services deals with the Ontario fire marshal on a number of things directly. Our emergency medical system and public health link with the Ministry of Health and Long-Term Care directly on issues.

1330

Critical infrastructure is a new issue that we're looking at. As we're into this project now, upwards of 85% to 95% is the most bandied-about percentage of the critical infrastructure that's owned by the private sector. So while provincial legislation compels us at the local level

to gather critical infrastructure information, there is nothing that compels the private sector to release it to us.

The identification of critical infrastructure seems to be a project that's underway at all three levels of government. Some of the comments we've had from the people we've approached is that they've already spoken with the feds and with the province and now we, the municipality, are talking to them as well. A national approach to that and some standards in what kind of information we're looking for would be useful.

The key issues—and I'll wrap with this—in emergency management now, as we see it, are:

(1) Resources: the need for sustained funding levels—there's a very limited surge capacity that exists in the municipalities—identifying and sharing interjurisdictional operational resources and locating and accessing stockpiles;

(2) Media and public communications: getting key messages through the media and assisting the public to cope with emergencies and recovery;

(3) Perhaps most importantly, the various roles and coordination in this business: the vertical and horizontal linkages that exist among jurisdictions, the information flow along those lines, upwards and sideways, the decision-making process upwards and sideways, and the front-line operational voice in planning and strategy versus a top-down approach.

In summary, the provincial act now mandates municipal risk assessment, emergency plans, training, public education. This is clearly the right direction to be going, but there's been no accompanying flow of money to assist municipalities in meeting those new legislative responsibilities.

The Acting Chair: Thank you, Mr Leonard.

MUNICIPAL PANEL

The Acting Chair: Now we'll have questions and comments from members of the Legislature.

Ms Broten: Thank you very much for your presentations. One of the things we've been hearing as we talk to folks about emergency measures and in particular the statutes we're faced with examining is that it's important to learn from past experiences, and unfortunately, I guess we've had a number in the province over the last few years. I'm wondering if you can share with this committee whether there were instances of inability to react in either a timely or appropriate way or to conduct the business of keeping the citizens in your community safe because of a lack of powers on the front-line level, as was just referenced by the city of Toronto; to really know what it's like on the front line and whether the folks out on the front lines have those powers.

For example, one of the issues that's been raised is the lack of ability to mandate someone to stay in quarantine during the SARS epidemic, the lack of ability perhaps to enter a private residence. Those types of powers have been referred to by Dr Young as being absent and I'm

wondering whether you could each take a moment to comment on that.

Mr Leonard: The quarantine issued during SARS, I remember, was something that flowed through public health. I don't have the numbers in front of me. I'm sure Dr Basrur may have them with her tomorrow. Essentially what we relied on here in the city of Toronto was people's goodwill to stay inside if they needed to, if they met the conditions that required that they were to stay inside. There were very few actual orders issued, that the medical officer of health was able to issue, that would compel them to stay in their residences. We had tens of thousands of people who were doing what they were asked and very few who weren't.

Evacuation is something that I don't believe the current legislation provides for in the sense of removing someone from their residence against their will. I don't think it provides for that. You can order an evacuation, the police and fire can say, "Evacuate that area," but if somebody chooses not to, I don't know that that's been sufficiently tested in the courts.

The Acting Chair: I'm just wondering, to follow up on that—I know Mr Gardner was going to comment—what about power to evacuate or to stop the flow of traffic on the bridge at Windsor or Sarnia, given the public safety risk with some hazard? Who has the authority, or do you have the authority to limit crossings of the bridge, for instance, in this question raised by MPP Broten?

Mr Gardner: Often in Sarnia—I'd say once or twice a year—we might have a precautionary shelter in place, where we ask people to remain indoors until further notice. Sometimes it's because of a chemical release or whatever. We're fortunate in that, from our emergency operation centre, we can break into TV and radio and we have municipal sirens.

One of the issues we have is that those are provincial highways. Do we have the authority to keep people out of the city limits, because they have to go through the city limits in order to cross the bridge? That's an issue. Also, how do we contact them to start with? I think most communities anywhere in Canada are having difficulty with how you get the message out. How do you notify people? There is technology out there but there seems to be no backing or support for that technology.

The Acting Chair: The question I wanted you to address, and which I think MPP Broten is trying to get at, is do you have the power to tell people to stay indoors when there's been some kind of chemical release? Who has the power to tell people, and what if they don't want to stay indoors?

Mr Gardner: It's like anything. If someone doesn't want to stay indoors, they're not going to stay indoors. Our chief will ask people not to park on the roads during snow removal because plows can't get in there. They have the authority to ticket cars that are on the road. Do we have the authority to ticket people who don't remain in their homes? I don't think so.

The Acting Chair: But if there was a chemical release?

Mr Gardner: If there was a chemical release, we—

The Acting Chair: Are there any powers that you might have, or that anybody has, in your jurisdiction?

Mr Gardner: No. For evacuation, it's grey. What we tell our officers is, "Are you going to waste your time trying to persuade someone for 15 minutes to leave their home or are you going to try to get to the next 20 or 30 homes?" You have to use a little bit of common sense. I guess you could take them in on a form 1 of the Mental Health Act. I guess you could push that if you wanted to.

The Acting Chair: Someone else mentioned that Mental Health Act thing.

Mr Gardner: But do you take the time? During an evacuation, you don't have time. You have to move people out and you have to move them out quickly. You mark down in your duty book where people have refused to leave and, if time permits, then you go back. Otherwise, you move out the general population. I don't know if I've answered your question, but that's our policy.

The Acting Chair: I think you have, yes. Mr Skorobohacz?

Mr Skorobohacz: I suppose I would respond as follows. Often enough, we're more in a reactive mode than a proactive mode. What I mean by that is we often have to react to what our neighbours to the north do or, in the case of Windsor, it's north of the border, but it's our neighbours to the south, the United States. Obviously, when they heighten their security measures and the code escalates to a different colour, we have to react and respond. Unfortunately, in our circumstances, the nature of the transportation system connecting the international border happens to be a municipal roadway, so the 401 spills out on to a municipal roadway, which then connects to the international border. Quite often, again because of the reactive nature, that means our police services, our fire, all of our emergency folks, are on a heightened state of awareness and alertness to respond to any internal problems because the congestion on local streets becomes quite problematic for us. So from that perspective, again, it's not a matter of us being proactive in addressing it. It's more of a reactive approach.

If we would have greater authority and the ability to develop a staging area outside of our community to hold traffic back so that when the border clears there is an opportunity to move vehicles in a more proactive manner in terms of allowing that stage, I think that would certainly be beneficial to a community such as ours.

The Acting Chair: Sorry to interrupt. This is very interesting. It's actually the same thing that Sarnia is going through with the other jurisdiction. Is it Bluewater with the 22,000? What community is it that's adjacent to Sarnia?

Mr Gardner: It's Point Edward village and it's got 2,200.

The Acting Chair: Therefore, you can't really control access totally, because you've got another municipal

jurisdiction there, plus you've got the First Nations people there at the same time.

1340

Mr Gardner: Now, 80% of the traffic is going through the Sarnia area. It's just the last little one kilometre, if that, that's actually in Point Edward, before it crosses the bridge.

The Acting Chair: So you think it might help if we could somehow provincially develop some protocol in a border-type setting where there would be some kind of body that would give direction, that there would be control at the point of origin, and that order would have to be made and adhered to by all municipalities and all jurisdictions in order to facilitate some kind of emergency measure. Because right now I think you're basically relying in an ad hoc way on the co-operation of everybody.

Mr Gardner: That's right. I agree with Windsor here. If we could have a staging area outside the city limits, then if we do have a chemical release, we can stop them further away from the community rather than right in our community, where they have nowhere to go because of the sound barriers.

Also, we get a lot of trucks honking their horns at night, waking up residents, because they can't get across the bridge. That's not an emergency issue, but—

Also, we have dangerous goods that are being transported. Do you really want them within the city limits? All our plants are to the south of the city, but when we have all the dangerous goods on one highway—I think everyone's aware of all the accidents we've had lately, just this year alone, with transport trucks crashing into each other. So I think it's an issue that's going to come back to haunt.

Mr Ash: Coming back to the initial question, I think the challenge comes down to the perception of imminent—of mitigating life loss and so forth.

Certainly, reflecting back on the recent experience down in Florida, there was a verbal dissemination of information: "You need to evacuate; the storm is coming." But obviously what happened is that the storm tracked differently and hit an area which initially wasn't anticipated. I think in any type of situation there's going to be that normal communication out to residents to say, "You need to evacuate, because this is the best information we have."

If you look at various disasters, the majority of the public will do that. I think what we're talking about is that small set of the public who deems that they want to protect their house. For example, in some of the wildfires in California and BC, some people wanted to stay back and protect their houses. They knew there weren't enough firefighters who would be able to protect their house, so they figured they'd get their hose out and try and do the job.

Sometimes people obviously aren't able to make the appropriate decisions necessary to protect their life. There may be circumstances in which those powers would be implemented, but I think it would be the

exception as opposed to the rule, based on looking at various events and incidents that happened in the past.

Within Ottawa itself, have we had any experience with that need specifically? No. I don't know whether it's because that ability wasn't there or available to us. Has there been any loss of life that I'm aware of due to someone disobeying a voluntary evacuation order? I'm unaware of that information. Nothing comes to mind in recent history with respect to the—

The Acting Chair: But I guess one question in terms of Ottawa, similar to Windsor and Sarnia, is the inter-jurisdictional problems. You've got the NCC, the RCMP, the local police, the OPP. Who has the authority to give directives, whether it be road closings or point-of-control preventative action? Do you have a process? Is it a mutual agreement with all the different stakeholders as part of your emergency plan? How do you deal with all these entities that exist in Ottawa, for instance?

Mr Ash: You touched on the complexity that Ottawa has, which I touched on in my introduction. We'll take roadways, for example. The OPP has responsibility for some roadways, the RCMP has responsibility for some roadways and the municipal police department has responsibility for some others. With respect to being able to close roadways, usually that's as a result of an accident, or if there's a spill or something has occurred, they can close a roadway. But in response to evacuation, once again, that's—

The Acting Chair: In closing a roadway, who has the power to—in other words, if it would be of benefit in an emergency situation to close part of the parkway—which is under RCMP control, is it not?

Mr Ash: Correct.

The Acting Chair: Would that be the RCMP's decision, or could the city of Ottawa's emergency measures organization give a directive to the RCMP to close that roadway?

Mr Ash: We don't have authority to do that, but it would be because of relationships that have been established. We would indicate our risk assessment and, in consultation, they would agree or disagree with that. Typically, they would agree with that.

The Acting Chair: I think I'm seeing the similarities here in terms of different jurisdictional authorities—a simple thing like roads. It hasn't happened, but we're here to look if something does happen. We have to look at these scenarios and see if there's something we can do, through not only emergency measures statutes but also all the statutes we have—in the Ministry of the Environment, MTO. We want to try and see if we can improve or amend various statutes that we may have to amend in order to facilitate emergency response or disaster prevention.

Sorry to dominate with these questions. Mr McCallum.

Mr McCallum: I have just one quick point on communication and the examples that Mr Ash used of the forest fires and the impending tornado in Florida. The problem in Sarnia and perhaps other municipalities is that

our evacuations are immediate. If we have a vapour release, we have to have people out of their houses almost instantaneously. We don't have the advantage of hours, or even days perhaps, of pre-notification. We need to be able to notify people virtually within minutes. That is a communication forum that we don't have.

We have looked at classical devices and instantaneous notification through the telephone system, but they're very expensive. We have not been able to implement them or really to afford them in the city, so we have no immediate communication ability with our residents who may need to be evacuated.

Ms Broten: I wanted specifically to ask a question to Sarnia, and if others would like to comment, that would be helpful as well.

I wanted to raise the issue of private sector involvement as a partner in response at the time of an emergency. We certainly understood from previous folks who were in front of this committee that the private sector felt they could contribute their resources in terms of being involved, and that they do, but that those agreements are not formalized in many ways and they didn't want them to be mandated or formalized. I wonder if, from the city and the municipality perspective, you can comment on how those agreements have developed and where you see the future of that type of agreement. Does it remain voluntary, or do we need some kind of legislative change to mandate cooperative assistance?

Mr McCallum: I'd say that everything today is voluntary. This CAER that I speak of and CVECO are organizations of industry, the hospital, the municipality, and so on. We have a significant history of public-private relationships in the city of Sarnia, not only in emergency measures but many other fields as well. Industry has been very forthcoming with participation in helping to pay for the sirens, helping to pay for our command post bus and many other types of contributions.

Certainly everything, Mr Chair and Ms Broten, is on a voluntary basis. Whether legislation would be able to force industry to participate along with municipalities, I'm not certain. Perhaps its being voluntary remains the best way to proceed with that.

Ms Broten: Yes.

Mr Ash: If we reflect on some of the things that have occurred in the States, industry was required to disclose their worst-case scenario and most probable scenario for releases and whatever. The result of that, generally speaking—I'm just reflecting on the DuPont experience—was that they realized that by verbalizing their worst-case scenario, it would more or less scare the whatever out of the public. In order to mitigate that negative response, it put them in a position in which they worked collaboratively with the local governments to put in place mitigating processes and support networks with respect to resourcing and what have you to deal with those issues. So it wasn't a mandatory means to put something in place or collaborate but, as a result of having to disclose worst-case and most probable; it put up the framework to begin that collaboration, and I believe it's been quite positive.

1350

The Acting Chair: Mr Brownell.

Mr Brownell: I'm delighted with the conversation of this afternoon: an excellent presentation from each and every one of you. I'm especially pleased to see some of our border communities, for I come from a border community, Cornwall, and had somebody from the city of Ottawa very close. It all ties in.

First of all, you commented about the G-8 summit held in Ottawa a few years back, and—I can't remember what year. I'm going to tie in a local situation and see if I can get a response out of the other border communities. But during that summer of the summit, the community of Cornwall was asked to be prepared, with the police force on standby, and this had to be done, that had to be done. They went to great expense. The summit was held. There wasn't a great kerfuffle at the border, but they still had to be prepared and ready.

There seem to be many other events that happen in Ontario that perhaps may have an impact on border communities. Do you find that in your dealing with emergencies and whatnot? Do you find that at your borders, and do you find expense relative to that? I know that in the city of Cornwall, they are still quite concerned about the expense they incurred back in whatever year it was with regard to getting ready for it. It disturbs the city in particular that, because they are at the border, down the road with similar events, they will have to incur great costs and there will not be the supports. Have you found that?

Mr Skorobohacz: Perhaps I'll take a shot at that, sir. In fact, in 2000, the city of Windsor participated in the Organization of American States symposium, the OAS. Certainly, we found a significant cost associated with the security issues, the emergency preparedness and planning, and obviously the logistics and arrangements associated with that event. Even though there were commitments relative to providing some level of funding and support to the local municipality to get its various departments and organizational structure in place to address that particular event, we still found ourselves significantly underfunded relative to being able to provide that.

Perhaps I could also address the issue in terms of 9/11. I think certainly all of us can recall the incidents surrounding 9/11. For border communities especially, when that international border closed down, the impact on our local municipalities was astronomical. I would suggest to you that if you were to look back in terms of the traffic congestion that was caused as a result of 9/11 and the closure of the borders, it was several weeks before we found ourselves back in a position where we were addressing what we now term "the new normal." I think that's something we've lost sight of, the fact that the world changed. As a result of that change, we continue to find ourselves recovering and addressing it and putting more resources, more energy, more financial commitment to the issues associated with border security and local security issues. Our policing costs have gone up

significantly as a result of that. As I alluded to earlier, whenever our neighbours to the south in the United States escalate the security code, that has a detrimental effect in terms of what it means to the local municipalities that happen to have those border crossings.

Mrs Sandals: A number of you have mentioned issues around disclosure of information. I noticed that in one of the briefs, or somebody talked about, a disconnect between the federal government, which may have the power to collect the information, and the municipality, which is doing the planning but doesn't necessarily get the information. A number of you have made comments about disclosure of information. Could you share with the committee what you can collect currently, what you can't collect currently and what power you would actually like to have? It doesn't matter where we start.

Mr Leonard: The critical infrastructure inventory—what we're now required to do is collect infrastructure that's critical to the functioning of our city. But if you go to a large number of the people who actually own the critical infrastructure, it's the private sector. I've heard 80%, I've heard 90% and some people say 95% of critical infrastructure is owned by the private sector.

Let's take telecom, for example. If you go to Bell Canada and ask them for the locations within my city that we would want to include on a critical infrastructure inventory, they may or may not provide it. I don't know that any of the other levels of government have anything in place that would compel them to provide it to them either. I do know the very first question that's asked, whenever we go to some of these organizations, is, "What are you going to do with that information?" Understandably so. These are sensitive sites for them. They're hesitant to release those critical pieces of their own infrastructure, because once it's out there, it's out there and you've lost one more place from which you have control of that information, and of course, these are the critical locations.

Mrs Sandals: If I could make an imaginary "for instance," the banks, for obvious security reasons, may not want to share where their actual data centres are and where the actual hardware is located, but when it comes to an emergency situation you don't know what you're trying to protect. Is that the issue you're getting at, or is it more on the hazardous materials side that you would be concerned, or both?

Mr Leonard: No, it's clearly things like data centres and key telecom connections. But it could include things like bridges, transformer stations—although, they're pretty easy to find with a car and a tank of gas. There are locations around that we've been asked to inventory, and I guess what we're not sure of is what we're going to be asked next. If we're asked next to protect these pieces of critical infrastructure, is that something the municipality is going to have to pay for because we've identified them as something that's critical in our municipality? I know that's a little off your question; we were talking about getting the information in the first place. But we're doing it because we've been asked to do it.

The Acting Chair: The question I have about infrastructure is, who is asking you or how are you now in a mode where you have to get this inventory of infrastructure?

Mr Leonard: That's the Emergency Management Act.

The Acting Chair: So they've asked each municipality to get this inventory of critical infrastructure, right?

Mr Leonard: That's right.

The Acting Chair: These are fibre optic cable networks. Would they ask, for instance, if buildings contain chemical plants or certain volatile chemicals? All of that has to be done by the municipalities right now?

Mr Leonard: Those are two separate things: One poses a risk, and one is critical infrastructure. We're doing both.

The Acting Chair: You're doing both, right?

Mr Leonard: Yes.

The Acting Chair: I guess, in some cases, there's no compulsion on the part of the private sector owner to co-operate and give the municipality the information you're asking for.

Mr Leonard: That's correct.

The Acting Chair: And there are regulations about to come forward on that legislation, right?

Mr Leonard: That's what we're led to believe.

The Acting Chair: Have you got any indication whether there will be any regulations there that will give municipalities some kind of ability or compel the private sector to disclose this type of information to the municipality? Has that been—

Mr Leonard: I haven't been led to believe that. What we've been led to believe about the regulations is that they're going to provide more detail for us but they're going to very closely mirror the community framework, which is a document we already have from emergency management that rolls out our emergency management activities for the next three years but does not address that specifically.

The Acting Chair: I think Mr Gardner wanted to comment on that.

Mr Gardner: Environment Canada, through their CEPA list, have put together a list of 178 that they require storage facilities to list. I'm not aware that the province is getting that list as well. Petrochemical companies have to produce this to the federal government, but there is no legislation I know of that makes it mandatory that they share that with the municipality they reside in, which is going to be responding to it and has to deal with it.

Mrs Sandals: What I was getting at is that that information is going somewhere but it's not going to you, and you have no power to require that they disclose that to you, even though they're disclosing it to the federal government.

Mr Gardner: That's correct.

Mrs Sandals: If I can follow up something I thought I heard from Ottawa, then: You made reference to some American legislation that I thought you were saying does require that disclosure.

Mr Ash: I'm not sure of the exact term but it's often referred to as a worst-case scenario or most probable, where industry has to disclose to the local government the worst-case scenario, if they had a chemical release or whatever. If something went wrong in their particular industry, what would that result in? They went through a process of establishing benchmarks, ways of measuring and that kind of thing, and they did that through engagement with the local governments. Through that collaboration, partnerships evolved into which they became integrated as part of their emergency response plan.

Mrs Sandals: That's federal legislation that you're referring to?

Mr Ash: It's my understanding that it's federal legislation, yes.

The Acting Chair: Any further questions or comments?

Thank you very much, gentlemen. It's been most helpful, especially in light of the interconnectivity faced by your border communities. Your experiences there are very unique and also intertwined. I think that kind of input really helps us in terms of looking at the special responsibilities and special challenges you have in your communities. Again, thank you very much.

If you want to proceed with more information to the committee that you think might be helpful in our deliberations, please do so. Again, thank you for coming to the hearings today. I appreciate your taking that time.

We are now adjourned until 9 am tomorrow in the same place.

The committee adjourned at 1403.

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CONTENTS

Tuesday 17 August 2004

Emergency Management Statutes Review: Private Sector Panel	JP-107
Insurance Bureau of Canada	JP-107
Mr Mark Yakabuski	
Greater Toronto Airports Authority	JP-108
Mr Keith Medenblik	
Mr Scott Smith	
Mr Jim Bertram	
Canadian Bankers Association	JP-109
Mr Rex Pattison	
Mr Ron Baird	
Canadian Federation of Independent Business.....	JP-110
Ms Judith Andrew	
Bruce Power.....	JP-111
Mr Frank Saunders	
Enbridge Inc.....	JP-112
Mr William Bishop	
 Emergency Management Statutes Review: Municipal Panel.....	 JP-128
City of Sarnia.....	JP-128
Mr Terry McCallum	
Mr Cal Gardner	
City of Windsor.....	JP-129
Mr John Skorobohacz	
City of Ottawa.....	JP-130
Mr John Ash	
City of Toronto.....	JP-130
Mr Warren Leonard	



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Mercredi 18 août 2004

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Emergency Management
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 18 August 2004

Mercredi 18 août 2004

*The committee met at 0907 in room 228.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mike Colle): Could I have your attention to bring the committee to order. Good morning, ladies and gentlemen. If you could find your seat, that's the first test.

Interjections.

The Acting Chair: We have nameplates there. It's part of the test the committee has imposed on MPPs, primarily, and guest panellists to find out where their seats are.

Anyway, welcome here this morning, taking time from your extremely busy schedules. We're here sitting as members of the justice policy committee. I'll just let our guest panellists know that the mandate of this committee is "to review and report on the adequacy of Ontario's emergency management statutes; and that the committee be authorized to adopt the text of a draft bill on the subject matter of this order of reference...." So we're here essentially to review the existing statutes, to see their adequacies and recommend in a report potential changes and improvements, and also to draft a bill to meet, perhaps, some of the issues raised by presenters to this committee.

I'll just outline this morning's format. In the first portion we're going to have presentations by Dr Sheela Basrur, the chief medical officer of health for the province of Ontario, and Allison Stuart from the Ministry of Health, the emergency management director, if I'm not mistaken.

We'll leave about an hour for that. The presenters will put forth a statement of 15 or 20 minutes and there will be questions from MPPs for the remaining period. Then, after the first hour, we'll go into the round table panel whereby we'll have other panellists—Dr Low will make a 10-minute presentation, followed by others who will make 10-minute presentations—and then there will be questions and comments by other MPPs or other panellists. We hope to get comments and questions perhaps from the panellists. That will be allowed, which is quite outside the norm of the way this committee works. But we hope that will generate some good dialogue and expand on some of the issues that all of us would benefit from.

Just bear with us as we work our way through this process. It's worked fairly well so far as we're trying this new, more interactive approach to committee hearings for this very important topic. So we'll start with—

Mr David Zimmer (Willowdale): Mr Chair, I wonder if you might consider just introducing the members of the committee.

The Acting Chair: Who the MPPs are? Yes. Just for our guests, normally what happens is that we have the opposition on one side and the government on the other side in these committee hearings. To make it somewhat more informal and interactive, we've changed the seating format. So on our right, in the corner, we have Wayne Arthurs, MPP. Representing the NDP, we have Peter Kormos, MPP. We have MPP Laurel Broten, MPP Liz Sandals—

Mr Peter Kormos (Niagara Centre): She's the parliamentary assistant to the Premier.

The Acting Chair: —MPP Jim Brownell. I think we're all parliamentary assistants to someone here, but the Premier is above and beyond all of us other PAs.

Mr Zimmer: Don't forget me.

The Acting Chair: And David Zimmer, yes, MPP from Willowdale.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): [*inaudible*] the introductions?

The Acting Chair: Have you heard the introductions? Yes, they have.

OK, let's begin then with the first portion, the presentation from the Ministry of Health and Long-Term Care. Dr Sheela Basrur or Allison Stuart. Who would like to begin?

SHEELA BASRUR

Dr Sheela Basrur: I'll begin. Thank you very much, Mr Chair and members of the committee. We have a slide deck that is winging its way over to you, so there is no need to take detailed notes on what I'm about to describe for you. As I understand it, the committee is most interested in understanding what existing authorities we have under present legislation, what authorities we would like to have in order to better deal with future emergencies, whatever those hazards may be, and then to open it up for questions. So that's what you can expect. We'll see if that works.

Overall, the enabling legislation for public health is the Health Protection and Promotion Act. This was first

enacted in 1983, the regulations in 1984, and it establishes the mandate and role for boards of health, for medical officers of health, and thereby for all of the staff in public health units across Ontario.

There are about 37 health units at the moment and there are varying governance structures for boards of health, depending upon whether they're in regional municipalities, free-standing boards, multi-municipal or single-municipal environments etc. But generally speaking, there is one enabling legislation that applies for all.

The purpose of the act "is to provide for the organization and delivery of public health programs and services," with particular reference to prevent the spread of disease and to promote and protect the health of the people of Ontario. Of course the act binds the crown, so in any action, deliberation, policy, value or principle, the primary consideration is the health of the public and what means are necessary in order to protect the health of the public. It may not mean protecting an individual from themselves—that may be a mental health issue—but it certainly involves protecting the health of people from the actions of another that they may be exposed to beyond their consent or against their will in some fashion.

The second thing is that, under the act, every board of health must either provide or ensure the provision of health programs and services that are set out in the act or in what are known as mandatory guidelines, which are set out by the minister from time to time and fall under a number of different categories: family health, communicable disease control, environmental health issues and the like.

In addition to the mandated programs and services that are set out under the act, there are a number of statutory authorities that fall to medical officers of health, and in some cases to public health inspectors as well, to prevent, reduce or eliminate the effects of health hazards in their community and to take steps to prevent, reduce or eliminate the risks from communicable diseases or the risks or reality of outbreaks of communicable disease.

That's the general framework of the law under which we operate on a day-to-day basis. In a time of either anticipated or real emergency, we may scale those powers up for greater and greater application. If they prove to be insufficient, then the local medical officer of health would call upon the province for advice and assistance and we would take it from there.

There are a number of different ways in which diseases are classified. As you are aware, Justice Campbell is right in the midst of considering the issuance of another interim report, which will likely be in September. I expect that he will be commenting on the current classification of diseases. Suffice it to say, if you know it and understand it, it makes sense, and on first blush you wonder why there are all these different lists and rules and so forth. But the current scheme is that there are reportable diseases, namely those we wish to maintain surveillance of. We want to count how many cases of influenza there are, how many cases of chicken pox there

are, so we can monitor trends over time to determine whether programs are effective or not, whether additional resources are required in certain parts of the province and so on. That's reportable, and those are designated in a regulation.

The second list is communicable diseases. Those are diseases that can spread from person to person and for which public health control measures may be necessary in order to reduce the risk to the health of the public. That's a subset of the reportable disease. So we've got two lists now.

The third is virulent. Virulent diseases are those that are so contagious, if I may, that they require extraordinary powers in order to ensure that the health of others is not threatened. Lassa fever would be a virulent disease; tuberculosis is a virulent disease. Just to pick on tuberculosis for a moment, it is a preventable, treatable, curable disease but, if untreated, it will kill the person, and more to the point, will spread the disease to other people. We, under the act, have the ability, if all else fails, to require the person to be treated and, if all else fails in seeking to have them treated, require them to be placed in a facility to have monitored treatment on a daily basis until they're rendered non-infectious.

That extraordinary degree of authority is limited to a very prescribed number of diseases, of which tuberculosis is one. A disease for which there is no good treatment is not going to be subject to those kinds of powers because there's no point in putting someone in a facility and then just leaving them there.

Mr Kormos: How readily does a new disease get put on this list?

Dr Basrur: In the normal course of government it can take months to years. In the case of SARS, where we had a very rapid escalation of a hitherto unknown disease, it literally happened over a weekend that it was made reportable, communicable and virulent, all in one. That's not the norm.

The Acting Chair: Usually we'll wait till you're finished before we ask questions, but, given the fact that we're all novices at this, who designated SARS as virulent? Who has the power to do that?

Dr Basrur: That's an authority of the minister under the act. In addition to the Lieutenant Governor in Council, the minister can make certain regulations, and it's the minister who has the authority to designate diseases as falling into one of these three—

0920

The Acting Chair: He did that by regulation? He or she can do that by regulation?

Dr Basrur: Correct.

The Acting Chair: In the case of SARS, who did it?

Dr Basrur: It would have been Minister Clement at the time.

The Acting Chair: OK. Thank you.

Mr Kormos: Not by regulation?

The Acting Chair: Just for our interest, did he do it by regulation?

Mr Zimmer: On a point of order, Mr Chair: I thought that the way we were going to handle this was to hear the presentations and then have a sequence of questions. If we all start jumping in with our questions, I think it's going to disintegrate. Should I hold my questions?

Mr Kormos: No, feel free.

Mr Zimmer: Well, are we going to hear the presentations and then have questions?

The Acting Chair: Mr Zimmer, as I said at the beginning of this committee, we are trying to make this committee work in an innovative way. At certain times the Chair will allow a member of the committee to ask a question where it's not in the prescribed, preordained order of the day in terms of how the committee will work. If I feel that it's a pertinent question that's not going to take us completely off the rails, I will allow for that to happen, because the spirit, hopefully, of this committee is to work on a degree of flexibility to achieve our goal of getting valuable information. So as much as Mr Kormos was basically out of order according to the old rules for the way committees work, so was I. But I thought it was just for our train of thought to continue. I thought it was permissible to ask that question.

Mr Kormos: I apologize.

The Acting Chair: OK. So do I.

Mr Kormos: It's been 16 years of being out of work.

The Acting Chair: So we both apologize, and if I could just explain myself in that fashion, we'll let Dr Basur continue as prescribed at the beginning.

Dr Basur: All right. If I can continue to be unorthodox, I'll take the liberty of answering questions where they are for clarification. If they are going to take us on a tangent, I'll request that that be dealt with later.

The Acting Chair: Exactly. Thank you very much for the help.

Dr Basur: Reporting to the medical officer of health is a legal responsibility for certain prescribed entities. Again, all of these are found in different sections and verses of the act. Laboratories are the primary reporting source, so if someone has a case of syphilis, let's just say, or SARS—it's not the best example, but syphilis would be a good one—they usually have symptoms. They go to the doctor, and the doctor may treat without getting a test done. The doctor may or may not phone the public health unit to report it. They are supposed to, in law, and sometimes don't. But if they do take a swab and send it to the lab, the lab, by a matter of automatic procedure, will inform the local public health unit.

That's how we carry out our surveillance and that's how we initiate control measures. We rely on either the voluntary or the mandatory requirement to report for surveillance and control of infectious diseases. School principals, hospital administrators and operators of laboratories are the main entities that report disease to us.

In turn, there is a duty on medical officers of health to report these diseases to the Ministry of Health. Again, there's a regulation setting out what the requirements are. We are in the midst of reviewing and revising that regulation in order to learn from the SARS experience,

and also to implement a better disease surveillance and case management system, which was lacking during SARS but which is now going to be, in the foreseeable future, rolled out.

It is not quite clear as yet how the chief medical officer of health in this case can and should report that information more broadly to, say, Health Canada or other authorities, and whether that can be nominal, or named, information with personal information in it or whether it must be anonymized information. So when you're looking at things that should be clearer in the future—again, I can expect you'll hear this from Justice Campbell in his interim report—that is one of those areas that would benefit from greater clarity.

The act does specify what offences are. It specifies a schedule of fines. It does note that no action or proceeding may be instituted against a person who makes a disease report if they are doing so in good faith, because it's recognized that the act is meant to protect the health of the public at large, and you don't want to be prosecuting people for trying to do their duty as either a good Samaritan or as a good member of society.

The medical officer of health has authority for a prescribed geographic area which is called the health unit. Sometimes the health unit becomes synonymous with the office and the organization. In fact, it's the territory that they serve. So the medical officer of health and the board of health for that area have full legal jurisdiction for that, but not beyond. Generally speaking, the chief MOH has authority for the entirety of the province, but usually only upon request.

Again, one of the recommendations that came out of the first Campbell interim report was that this system be flipped around such that the chief MOH had all of the authority and then delegated on a day-to-day basis to the local medical officers of health. That has a whole lot of, let's just say, pros and cons attached to it. Right now what we have are local MOHs that have day-to-day authority, and if need be, they call upon the chief for advice, assistance, more resources, fewer resources or what have you.

If there is an emergency, if the minister or the chief MOH forms an opinion on reasonable and probable grounds that a risk to health exists for any persons in Ontario, then certain additional powers can be exercised. Those are spelled out in the act as well.

Should I just keep barrelling along here?

The Acting Chair: Yes.

Dr Basur: OK. There are a whole lot of materials in the deck that summarize the different authorities that fall under a couple of relevant sections. I won't read through them now, because I think it's better to have them come up through the questions.

The Acting Chair: Just use your own discretion as to what you think needs to be highlighted.

Dr Basur: OK. For highlights, if there is a health hazard in the community, we have what's called section 13 authority to do what it takes to get rid of that hazard or reduce its impact on people. This would be non-com-

municable: chemical spills, poor air quality—some brave medical officers of health have used it for tobacco smoke—and the like. In addition, for communicable diseases we use section 22. I'm going to refer to these numbers periodically as being germane sections of the act. Finally, for emergencies we have section 86. So 13, 22 and 86 are provisions that I live, breathe and sleep on most days.

In addition, there are a whole lot of steps that can be taken—either asking people to do certain things or asking people to stop doing certain things—so as to limit the spread of communicable diseases from one person to another. Again, these are spelled out in great detail in the act and also in the slide deck that will be coming.

One of the elements that arose during SARS was our inability to issue orders on anything but a person-by-person, one-at-a-time kind of basis. There was an instance wherein we had an entire group of people who needed to be put into quarantine on a weekend. It was physically and logistically impossible to issue orders person to person on a Saturday afternoon for 350 people who happened to live in three or four different health units all at once, each with their own MOH, their own solicitors and so on. So now there is an amendment to the act. Again, that was processed even between phases one and two of the SARS outbreak. So things can happen fast when the will is there, but also when the need is apparent, such that orders can be issued against a class of persons. In a future pandemic or other wide-scale emergency, that will be a very helpful provision so we can issue mass orders if necessary and if warranted under the circumstances.

There is an appeal mechanism through the Health Services Appeal and Review Board when an order is served, but the order takes effect at the time it's served, notwithstanding that an appeal may have been filed. Sometimes appeals take many, many weeks to be heard. When the purpose is to protect the health of person Y from person X, you can't have the wheels of justice grinding along in such a way that people get sick and die in the meantime.

I won't go into the fines and all the different legal aspects that exist here. Suffice it to say you could go page after page on what's in there.

0930

In terms of offences, generally speaking, if someone has a communicable disease and they're not behaving themselves in a way that would limit the risk to others, the medical officer of health would issue an order. If the order is breached and there is documented non-compliance of the order, then if it's virulent, you can go to a superior court justice and seek detention in a health facility to require them to be treated—to be placed in isolation against their will, so to speak. In addition, if it's not a virulent disease, you can go to Ontario Court (General Division) and seek a restraining order by a judge for a similar purpose.

Now, there are not many instances in Ontario's history where court orders have been sought against individuals

who have been exposing others. But a classic example might be someone who is HIV-positive and is willingly, knowingly, deliberately exposing other people to that infection, notwithstanding that there's probably a mutual responsibility to determine whether you're protecting yourself, much less protecting other people.

As I mentioned, section 86 is a provision in which the minister or the CMOH is authorized, where they're of the opinion that a situation exists anywhere in Ontario that constitutes or may constitute a risk to the health of any persons, to investigate the situation and then take such actions as are considered appropriate to prevent, eliminate or decrease the risk.

You may be familiar with a situation recently—

Interjection.

Dr Basrur: Oh, thank you. It'll just distract you to look at it, so just leave it closed for now.

The Acting Chair: You remind me of my grade 6 teacher.

Dr Basrur: You may be familiar with a situation recently in a Muskoka-Parry Sound health unit where the province undertook some intervention steps to deal with a public health problem. This is a good example of two different provisions in the act whereby the province can intervene, where necessary, to protect the health of the public.

This is public information in that it was written in the newspapers—locally, at any rate. There had been a breakdown in the on-call system for after-hours response to urgent situations and emergencies, such that after working hours, there was no qualified person who was able and willing to deal with whatever the situation was. I won't get into the detail. There was a labour-management issue behind it and so forth.

Suffice to say that we had received a few complaints, not only from within the health unit, but from surrounding jurisdictions concerned that if a situation arose in that health unit that spilled across the borders to adjacent areas, it would become everybody's problem and that the only entity that could take action to deal with it would be the province. So what we did was serve notice on the board—and this is a board that did not have a full-time, permanent, qualified medical officer of health, contrary to the act. So we appointed a medical officer of health to serve that health unit and told the board that's what we were going to be doing because we needed to remedy that situation.

In addition, there had been some long-standing governance problems related to that board of health. Again, the details are beyond the scope of the committee's mandate but the province felt those were interfering with the normal operation and good management of the health unit, and took steps to do what's called an "assessment" under the act so we could diagnose what was happening at the board of health, reverse any decisions that might have been taken that were impeding the health unit's operations, and thereby eventually put it on a sound footing.

So there are procedural steps and safeguards in the act, not just for the individuals who may be afflicted with a

communicable disease, but also to deal with the organization locally that is meant to deal with these things properly. So there is a system of safeguards, if you like, that ought to kick in, if situations warrant it. Not on a daily basis, by any means; in fact, my understanding is that this is the first time section 86 has actually been implemented since the act was written. I may be wrong, but if there's another, it's probably only one other situation.

There is an additional provision within that series of sections that enables the chief MOH to take action, not just on diseases that are regulated as reportable or communicable but on any disease that is deemed infectious. "Infectious" is not a defined term, so it's literally at the professional judgment of the chief medical officer of health, and any advisers that they may have, to say, "We have a totally new entity," as we did during SARS. It didn't even have the name "SARS"; it had the name "severe atypical pneumonia from Hong Kong and Hanoi." Well, that's not much of a disease classification, but it was felt to be very serious in its manifestation. We had four possible cases in Toronto, two of which had died, so we had a 50% case fatality rate, and still a disease with no name. Something needed to be done, and the chief MOH would have had the ability to take whatever action necessary as an infectious disease, even though it hadn't actually been in the regulation at that point. The chief MOH at the time did take action to make sure that all those authorities were put in place as quickly as possible.

Again, if there's a breach of the directions that are issued by a chief MOH, the CMOH can go to court and seek an order against a board of health that is not doing its job to protect the health of the public. We've never had that instance happen in Ontario, to my knowledge, but the provision is there, if necessary.

A further matter that was identified as a missing piece during SARS was the inability to detain ill people, or people not yet ill but exposed and potentially infectious, in a safe place. So if someone had been exposed to SARS in a hospital, for example, and they needed to be put into quarantine, we could quarantine them in their home, but we could not set aside a building as "the quarantine facility." If you think about either SARS or pandemic influenza or, heaven forbid, smallpox or some such, you may want to have facilities that are designated as the place to put either ill people—conceivably, you may want to put well people there who are needing hospital care, but you want to keep the sick and the healthy separate. Or you may have people who've been exposed and you need to assess them for a certain period of time under very strict supervision, and they need to be in a defined, prescribed area with proper medical and nursing supports and all the rest of it.

The act now allows the minister to "order and occupy"—forgive the legal language—or to require that a building be given up to the minister to be used as a temporary isolation facility for up to 12 months, and that order can be extended if need be. In addition, temporary

isolation facilities can be used where necessary in order to protect against the spread of communicable diseases.

Again, some of the provisions that I'm describing to you are long-standing; they've existed since 1983-84. On some of them, literally the ink has not dried because they reflect our experience in SARS last year. We suffered for the lack of those provisions, and now have them.

There are a whole variety of regulation-making authorities that are listed under the act. I won't go through those in detail.

I'll turn now, finally, to the possible enhancements to health legislation that would be helpful in the context of amendments to the Emergency Management Act.

I would like to stress that it's critical to achieve a balance between day-to-day civil rights and the normal workings of a community—businesses, livelihoods, people's ability to attend school and go to the playground and all the other facets of normal human living—but also not to wait until an emergency is upon you to try to say, "Oh my God, we need to do these three things, and we're not sure what the authorities are," or "We do have the authority to do the first two, but the third one was always seen as something we would attend to at some future date." By the time that date is upon you, I'll tell you, it feels like it's way too late to start thinking about what you need. This is the time to think about what you need and to put it in place, and perhaps to have some safeguards and checks and balances built into the legislation or into the policy framework that supports it, so that they're not used on anything but an as-needed basis.

0940

You might, in the case of the health legislation, have a series of what I call "scaleable" powers that are consistent with the day-to-day structure of the regulation of public health, not totally divorced from it, so that when you start with what seems like one case, two cases, four cases, and, "Gee, it's not just one institution, it's two institutions, and yes, there were workers who crossed over and we're not sure where a third one may have worked because we can't find that person," you want to be able to scale up but not have to invoke a new statute entirely in a non-provincial-emergency situation. You want to be able to scale up, scale back, scale up in particular geographic areas or on particular functional areas so that you've got a sensible response.

Now, it is possible to have that kind of provision built into individual statutes—the Health Protection and Promotion Act, the Nursing Homes Act, the Homes for Special Care Act, the Charitable Institutions Act, all of the rest of them. You might have it in the Ministry of Health and Long-Term Care Act. Not being a lawyer, I'm not going to try to nuance what the differences would be. All I will say is that from a public health standpoint, I need the latitude, and I know the local medical officers of health need the latitude, to say: "These are our authorities. We know what we can do on a daily basis. We know if we have an urgent situation we can ramp up this quickly, but when we hit certain parameters, we've got to escalate it to the province, because this really goes

beyond our borders; it goes beyond our competence,” or, “It’s multi-jurisdictional, and therefore a comprehensive response needs provincial coordination and control.”

It might be the case that the chief MOH needs to have authority to make directives. I’m sure we can have a very interesting discussion, just the two of us, leaving aside the committee, about directives and who should issue them and what they should contain and what the process should be for development and approvals and so forth. During SARS, as you are aware, there were a multitude of directives issued under the authority of the two commissioners—the Commissioner of Emergency Management and the Commissioner of Public Health—and many comments back that people were unsure who was in charge because there were two signatories; there were always two people who had to be consulted. I would say that if you have a public health emergency, which means primarily that you have an infectious disease emergency for which public health is clearly the lead agency, it is wise, in my opinion, for those directives to be issued under the authority of the chief MOH. That’s not to say that the chief MOH wouldn’t check in with a whole lot of people: Dr Stuart—honorary doctor; lucky you—as the director of the emergency management unit; obviously with the deputy minister; with Dr Young over where he is, and so on. I’m sorry; the acronym escapes me.

The point is that someone has to be in charge; people have to know where the buck stops, where decisions are made and where they can be unmade, and who the go-to person is. For infectious diseases, I think it needs to be the chief MOH. For other emergencies, whether it’s a toxic release or a radiation accident or a major flood, there may well be health implications attached to those, but it’s not as clear to me that the Ministry of Health and the public health division is the lead agency for the care and control of the incident. They are absolutely going to be main supporters of the response, but not necessarily the lead. That’s the distinction I would make.

We can probably have a long debate, till the end of the day, about what’s a public health emergency where you might have a mixture. They talk about the spectre of, let’s say, a dirty bomb. A dirty bomb might be an explosive device that contains either nuclear or radioactive material, or it may have some real or perceived infectious pathogens in it. You’re going to have mixed responsibilities, mixed jurisdictions. You’d have to deal with that on a case-by-case basis, and everyone is going to have to work together extremely closely anyway.

Additional authorities that probably will be necessary before we have such things as pandemic influenza would be an ability of the chief medical officer of health to make orders regarding mass immunization of individuals or populations. Right now, from SARS we had the experience that we needed to issue an order against classes of people, but there was no vaccine. What if there had been a vaccine? I would have had to order, maybe, vaccination one at a time. I’m not sure I have the authority to order vaccination even one at a time, much less against a class of people. If we think about a vaccine-

preventable disease emergency, we need to have those provisions in place so we can take action pretty quickly to protect the healthy people from becoming sick.

Similarly, there may need to be the authority to order mass decontamination, whether it’s from a radiological exposure or from a chemical exposure of some sort, and some general provision that enables any other actions that are deemed necessary, reasonable and appropriate under the circumstances, to be taken, again, by a defined individual who has a lot of accountability and transparency to their work.

In my instance, I feel very strongly that the chief MOH is not just a statutory official but one whose job ought to be transparent, ought to be accountable, because it’s beyond being publicly funded; it’s to serve the public and protect the public’s health, and the extent to which I do that job well or poorly is something that people ought to know about and make a judgment on with appropriate due process. If I say I need to have all these different authorities under my bailiwick, I think it behooves that to also be countered with checks and balances.

For example, if I invoke an authority that is substantially more than just a day-to-day, there might be a duty to report out, to the minister or through the minister to the House, however you may see fit, to ensure there is accountability for the use of that authority, so there isn’t the spectre of some—I may be reasonable, but who knows about the successor to my successor? You would just want to set it out in place so it’s going to be sustainable over time.

I’m glad Mr Kormos has stepped out of the room. He’s probably listening on his speaker so he’ll run in at any moment, because some of these are a bit interesting.

Authorizing the chief MOH to order the collection, analysis and retention of any lab specimen from any person, plant or anything that he or she specifies: That sounds pretty open-ended. You might want that if you come across an incident that you’ve never anticipated in your life.

Authorizing the chief MOH to acquire previously collected specimens: My neighbour to my left gave blood when she was expecting a baby. That blood is in storage and, in an emergency, I can take that and use it for some other purpose. You might want to think about what kinds of safeguards would be necessary to protect the individual and, frankly, to protect the official and the government so that they’re doing the right thing and not more than is absolutely necessary.

The third one is authorizing the chief medical officer of health to require any person, organization, agency or any other entity to report information to the chief such that he or she considers necessary to reduce the risk of the emergency; in other words, so that I can compel any one of you to give me any information that I see fit. I’m not sure I want that authority unfettered. It’s important to think about what those checks and balances ought to be.

It is absolutely not on to say, “Yes, I’m in charge of the emergency, and I’m going to have to ask your permission,” and give you a consent in triplicate, and then

you're going to see your lawyer and give me a notarized statement, and I'll do that a million times over because that's the population I have to deal with. That's not on. So what's the middle ground in between that provides protection, not just for the giver of the info but the people who will suffer for lack of that information being given?

0950

Finally, extraordinary powers may be needed for a local medical officer of health to enter any premises, including a private residence, without a warrant—and I take a breath when I say this—where her or she has reasonable grounds to believe that a risk to health exists due to a health hazard or an infectious disease, if there is a declared emergency under the Emergency Management Act. By way of a small example that gives you the kind of dilemma we face, on a day-to-day basis we have authority to regulate food premises. Yet you can have a catering operation that operates out of someone's private residence, and the duty to inspect, the right of access to enter those premises where it is also a private home, is not crystal clear. That may just be the way it is in a free and democratic society on a day-to-day basis, but if you're in an emergency situation, you probably want some additional authority to be able to kick in.

On that note, I'll conclude my presentation and either turn it over to Allison or be prepared for questions.

The Acting Chair: We're going to have Allison Stuart continue with the presentation on behalf of the Ministry of Health and Long-Term Care, and then we'll have questions.

ALLISON STUART

Ms Allison Stuart: Thank you very much. As indicated previously, I am Allison Stuart. I'm the director of the emergency management unit within the Ministry of Health and I'm representing the Ministry of Health this morning before the committee. I very much appreciate the opportunity to contribute to the work the committee has undertaken.

What I'll attempt to do in the next few minutes is really focus on the environment we're working in: the operational environment, the policy environment and the legislative environment that Dr Basrur has referenced. In her presentation she talked at length about the legislative authority and powers both in place now and also ones where she's thrown out the challenge in terms of what needs to be considered within the context of the balance between individual rights and freedoms and the public good.

As you are all quite familiar now with the Emergency Management Act, having had it presented to you, I'm sure, multiple times, I'll just talk a bit about our responsibilities at the Ministry of Health under that legislation that are unique to health. Under order in council we have responsibility for human health epidemics and emergency health services. Now, I can tell you we have suggested, and people seem to be in agreement with this, that the order in council be modified slightly to read "health

services in an emergency," because in health-care speak, "emergency health services" has a narrower definition than "health services in an emergency." So we could anticipate that that proposal will be coming forward.

We are required to meet the material within the Emergency Management Act, and we have, as has been indicated, additional legislative authority and responsibilities under legislation that we work with, like the Health Protection and Promotion Act, the Ministry of Health and Long-Term Care Act, as well as individual legislation that we use in the administration and delivery of health care programs and services in Ontario.

I know other presenters have talked to you about Ontario's history of emergencies and I thought it might be helpful to you to hear a little bit about what health's role would have been or could have been in those emergencies. Some of them pre-date my experience, but I can certainly speak to the sorts of things.

The first one that seems to be referenced with some regularity is Hurricane Hazel. Of course, our ambulance services would have been involved with that in terms of removing from the scene folks who were injured as a result of the hurricane. The injured needed to be cared for in hospitals and other settings. The disruptions to the sewage system and the water supply system would require monitoring through public health authorities.

We had a quite different role in the Mississauga train derailment, where the local hospital and long-term-care facility had to be evacuated and moved to other hospitals, other long-term-care facilities and other gyms and auditoriums. Once again there was an engagement in that way, but there was also the role the ambulance service played in helping to effect all that.

More recently, the ice storm in eastern Ontario: In some of the communities, the hospital became the shelter because the hospitals had generators and there was a large enough gathering space that people who were not able to stay in their homes could have a setting to stay in.

The hidden group that requires and gets health care services in Ontario is those who are in their homes. That group's ability to get services was compromised both in terms of health professionals' ability to get to them, as well as having the appropriate supplies and so on in place so as to be able to work with that. Once again, there were concerns around issues of the power supply etc, and I'll talk a little bit more about that when we talk about the power blackout.

Our most recent experiences of course include SARS, where there were major impacts on health human resources, on our ability to provide services, on wait times, not only during the emergency, not only during SARS, but after SARS, as a whole health care system had to catch up or attempt to catch up with the experiences of SARS. During that time there was the public health management of the outbreak itself, quarantine issues, contact tracing of people who may have been exposed to the virus, that sort of thing.

Then, when we were starting to think we were going to have some relief, there was the power blackout. While

it's not specifically around health care, it had very profound impacts on health. Once again, the people who are in their homes and may be on home dialysis or receiving oxygen, that sort of thing, do have emergency arrangements but they don't anticipate the extent of an emergency such as we had with that power outage. So they were certainly in difficulty.

The ability of health care workers to get out to people in homes and to their jobs in institutions, because access to gas to fire up the car and get to work—a lot of people who work in Toronto, for example, come from outside of Toronto.

Something as ordinary as the drugs people may be taking day to day which need to be kept refrigerated—you'll recall that unlike this August, last August was hot. So the ability to keep those drugs safe was an issue. We know that various agencies that did have generator power became the refrigerator for other people who needed that kind of service. Also, from a public health perspective, we had to remind the public that once your power came on, it didn't mean that the food you had in your freezer was good to go. So there were roles to be played.

The most recent experience we've had is with the Peterborough flood, where we had to evacuate a long-term-care facility. That whole facility had to move out in short order because it was at risk, not only from what everyone else was at risk for in terms of the growth of mould, the fact that there was sewage etc, but their physical structure was compromised. In addition, the local public health authorities were actively engaged in monitoring the quality of the water and how the sewage was being managed, and all health care professionals engaged in monitoring for any symptoms or signs that would indicate there were going to be disease outbreaks as a result of the exposure to untreated water.

That's just to give you a sense that in a wide range of emergencies that might not immediately be seen as being health-related, health is there and health is very involved.

Right now, within the structure of the government, our minister participates in the emergency management committee of cabinet, and our deputy minister and Dr Basrur, in her role as chief medical officer of health, participate in the strategic policy committee, which is made up of deputy ministers of primary ministries and the Commissioner Of Emergency Management. On a more operational side, ministry staff participate in the operations executive group, which is made up of assistant deputy ministers, and we also participate through liaison staff at the POC, the provincial operations centre, so that we're in constant touch with what is happening across the province.

1000

In an emergency—and of course it depends on the emergency, whose emergency it is, what flavour of emergency—we will play roles that are quite direct as well as more indirect. Depending on the kind of emergency, our CACCs—our dispatch centres for ambulance services—are routinely involved in emergencies. Our base hospital programs, both air and land, support the paramedics, the

pre-hospital care, and provide them with advice in transit as they bring the patients to more definitive treatment.

We have the potential to dispatch our emergency medical assistance team—that's the EMAT, which you may have heard about and which provides support on the clinical side to hospitals and other direct service delivery—and our rapid response team, which can be sent out to a local public health unit to support that public health unit with some additional staff in an emergency.

The ministry also provides direction to and receives feedback from the broader health care system. That includes public health units, ambulance services, hospitals, long-term-care facilities, community-based services and individual practitioners. The role that we played most consistently during SARS was to provide directives on actions to be taken to respond to that particular emergency so that we had a consistent response by the health care system.

We also provide consultation and assistance through telephone lines directly to various health care providers, and play a significant role in supply management because, as we know, specialized supplies can be limited. We are continuing to do work in that area.

While the broader health care system is talking with the Ministry of Health, they are also working very actively at the local level with other local health care providers as well as with the local emergency response. One of the challenges for the local provider is to balance the telephone calls in both ears, one from the ministry and the other from the local setting.

Since our experience of last summer we've benefited from various reports: the Naylor report; the Walker panel report, which specifically recommends a review of existing emergency powers and related legislation; and the Campbell commission, which has issued an interim report setting out principles for strengthening public health and health emergency management capacity. As Dr Basrur has indicated, the Campbell commission is anticipated to release another interim report on legislation requirements.

The Ministry of Health and Long-Term Care has released Operation Health Protection, which outlines the public health renewal activities that will occur over the next five years. These include objectives and goals that will enhance Ontario's capacity to respond to health emergencies. Most of these in the Ontario health protection plan are in development, are in work, and they're not necessarily completed: the examination of the requirements that would go into the creation of a health protection and promotion agency; strengthening the role of the chief medical officer of health; strengthening the local public health units; the creation of a permanent expert committee to support prevention and management of infectious disease outbreaks—that will be formalized, I believe, in September; I think we're that far along—and to support excellence in public health through recruitment, retention and training programs; and enhance surveillance. We have surveillance activities in place on an ongoing basis for a couple of different entities,

diseases, and are looking at ways to make it easier for people to get the appropriate information to the right people and get the appropriate information back.

In emergency management, we've created the emergency management unit and we do have enhanced surge capacity, meaning that in an emergency, where you may need to provide additional resources, we have the rapid response teams I mentioned that can support the local public health units, we have EMAT, which can support the hospitals, and then within the Ministry of Health itself we have a virtual team. In an emergency, the small emergency management unit—and that's not a pitch for more resources—could not be expected on an ongoing basis to be able to manage 24/7 in an extended emergency. So we have identified, and people have self-identified, individuals who are interested in participating in the emergency management unit. They'll do their day job, but we'll provide them with additional training so that in an emergency they can be called to the unit to support the activities of it.

We have a dedicated health emergency management Web site now. We have visual recognition with the field through important health notices which are only used for important health notices; they're not for routine information. We have a communications strategy in place, and we now have a video link between the public health laboratory head office and the public health division, and that's soon to be expanded to include the emergency management unit as well.

The health pandemic influenza plan has been developed and circulated to the health care field so as to enhance local health care planning around pandemic influenza. We're also working in conjunction with the emergency management office in terms of preparing a province-wide pandemic plan that addresses all the issues of a pandemic that go far beyond health issues. We have a draft smallpox plan, and the ministry's emergency response plan is currently under review and anticipated revision.

In addition to these kinds of activities, the emergency management unit is coordinating business continuity planning across the ministry—which is common to every ministry within the government—developing the emergency readiness plan and using the health pandemic influenza plan as our model. We liaise with the broader health care sector with regard to emergency readiness. In an emergency, we provide the operational management of the emergency and we're also the lead for discussions with other provinces, territories and the federal government around health emergency planning.

In the case of an emergency, if there were an emergency declared now, we would provide, through the emergency management unit, the command/control function for the ministry, and the ministry would provide policy direction through the emergency executive management committee. This is chaired by the deputy and includes the chief medical officer of health, other assistant deputy ministers, myself and representatives from the Ministry of Labour, so that we're making sure we keep health and safety on our minds through this time.

In peacetime, when we don't have an emergency but we're doing a lot of the planning just in case, we have a health emergency management committee, which is chaired by our associate deputy minister and includes all the players described above. The Commissioner of Emergency Management also participates in that committee.

As Dr Basrur has indicated, we are looking at legislation we deal with day in and day out, with the benefit of the experience we've had over the last year, as to where there might be changes required.

We've talked about, in the health human resources area, that there may be times when we could bring in health human resources from other settings. This would require those individuals to be licensed to ply their trade in Ontario. We had great co-operation through SARS, but it could be expedited if there were actual legislation that describes how that would happen, with the appropriate checks and balances to make sure it's only used in a potential health emergency and not for other reasons.

1010

During SARS, we issued directives to provide the framework for health care providers. The legislative authority to issue those directives to health care providers and facilities was found by some to be unclear, although I think Dr Basrur has identified this morning the kinds of powers the chief medical officer of health has in those kinds of emergencies. Compliance with the directives was voluntary, and the compliance level was extremely high. But we don't know if that's the best route to take in the future, in terms of relying on people's willingness to comply, or whether we need to have a framework for that. This might happen within the provisions of the Ministry of Health and Long-Term Care Act, or we could make some changes within specific legislation. That's still really up for review. We could have it in legislation pertaining to long-term-care facilities, community care access centres, hospitals etc.

That's an overview of the ministry's involvement in emergency management and the linkages with the review you're doing at this time. Thank you for the opportunity to speak, and I look forward to the next part of the morning.

The Acting Chair: Given that we've taken up the hour, we'll go right into the expert panellists to give their introductory comments or questions—up to 10 minutes, if they want—and then we'll just go around. Then we'll have questions from everybody after that. I think that would be fair.

DONALD LOW

The Acting Chair: Could we start with Dr Donald Low, the chief microbiologist at Mount Sinai Hospital. Dr Low, thanks for being here.

Dr Donald Low: Thanks for inviting me. I'm really here more as somebody who was on the front lines working, as opposed to representing any group. So my comments will be observations that I remember, particularly from the SARS outbreak.

First of all, I'd like to support both of these reports. I think that many of the points I want to make have already been made in these reports, and I would support both of them. I think they're excellent and really touch on some of the key issues we had.

Let me just, again, put my focus on a couple of these issues that I thought were particularly important. One was critical: the identification of somebody who is really in charge. During this outbreak, that didn't happen, and I really would support that we identify who that person should be. Obviously, in medical emergencies, it should be the chief medical officer of health, and not only that that person has the authority, but also the authority to appoint individuals to assist with the investigation and managing of the outbreak.

I think what we lacked during SARS was a team of individuals who were given the responsibility and authority to carry out evaluating new treatments, trying to understand how the disease was transmitted or looking for the cause of the disease. That didn't occur. I think if it could have occurred, it would have been extremely valuable. I think that would have been facilitated by having somebody in charge with the authority to do that.

To come to the directives, our perception at the hospital level—and Janet may be able to confirm this—was that these were directives that had authority behind them and that we had to do them. I think that was the right thing. It was essential to have directives, because when you're dealing with a hospital environment, and each hospital had to deal with the directives themselves, we really had to treat them as directives; there was no question that we had to carry them out. If it weren't that way, it would have been helter-skelter, because everybody would have had an excuse why they shouldn't have to do something whereas their neighbours did. So I really think, as Allison pointed out, that these directives have to have weight behind them. They have to really have the legislation that they're coming down from above and it's the hospital's responsibility to carry them out to the best of its ability.

As Allison pointed out, it would also be nice to have the ability to bring in help from other jurisdictions. We couldn't draw from other professionals in Ontario because they were dealing with their own issues at their own hospitals and needed to be on their own base sites. But there was support from other provinces as well as a lot of support from the US to come up to help with the outbreak. I think anything which facilitates that occurring more readily in the future would be valuable legislation to have.

Really, things worked quite well because people worked together and realized how critical it was. In the future, it might not be of the same magnitude or have the same sense of urgency and it might be much more difficult to manage a similar event, so I think it is important to have legislation in place. I think the chief medical officer of health has to have this authority to manage such an outbreak, being scaled, whether it's something of the magnitude of SARS or of a smaller

magnitude, such as a hepatitis A outbreak, that might occur in several jurisdictions.

As I understood during the outbreak, the chief medical officer of health really didn't have authority over other public health units. Everybody was marching to their own drum, so that there were sometimes different definitions and criteria used. At least that was my perception. It would have been better had we had somebody creating common definitions and criteria for putting people in quarantine and so on.

I have one last point to make. Sheela pointed out the new powers on her last page. I think one other power that could possibly be added or discussed is the ability to gather clinical information from individuals in different hospitals and different jurisdictions that needs to be gathered in order to manage and understand how to deal best with a crisis, whatever it is, because we often got into arguments about what was research and what was public health. We would have hospitals telling us that we couldn't have access to this information because we were carrying out research. There's this false belief that just because you publish something, it's research. In fact, it was critical during the outbreak to be able to get access to that information so we could distill it and come up with evidence that would help us better manage patient care and control the outbreak. I think that may be an additional authority which could be added to the last page of Sheela's recommendations.

ONTARIO HOSPITAL ASSOCIATION

The Acting Chair: We'll move on to Janet Beed, the chief operating officer of the Ontario Hospital Association. Janet, thanks for being here. Please proceed.

Ms Janet Beed: I have with me Barry Monaghan, the president and chief—

The Acting Chair: I thought Barry was going to give his own presentation.

Ms Beed: We've decided that I'll speak for both of us—thank you, Barry, for letting me do that. He's president and CEO of the West Park Healthcare Centre.

The Acting Chair: By the way, I should mention to the panellists that all of this is being recorded for Hansard. There's verbatim recording of all of this, which will be available to the public, to other members of the Legislature and to us. That's why I think it's important to identify yourself when you are speaking. You can get copies of this if you wish. They're also on-line.

Go ahead, Janet.

Ms Beed: I'd also like to thank the panel for inviting the OHA and its members to make contributions to your discussion as to where we need to go next. We appreciate the invitation.

As you can appreciate, hospitals were at the forefront of the SARS outbreak. We learned a great deal about emergency management, what can be done in health care with health care providers and what's needed in terms of necessary resources to respond to future health care challenges. Certainly legislative reform is integral to any future management of health care challenges.

1020

The previous speakers have captured many of the activities we've talked about, but I will summarize from a hospital context where we think emphasis needs to be placed. In preparing for this, the OHA's health emergency management subcommittee reviewed some of the key issues, and Barry and I are presenting today on what those key issues were from that collective.

When health providers are faced with an emergency situation, the goal of maintaining service to the community is paramount, but one needs to do that among a number of logistics challenges, such as supply management, which would include anything from masks, gloves and gowns, to water, fuel and electricity. Patient transportation is key, and ensuring a centralized telecommunication process and human resource management. Those are big issues to be managed, all the while paying attention to patients who are in our beds or who will need those beds.

To address these challenges it's crucial—again, I'll reinforce what others have said—that a system of coordination, providing an overarching central authority, be created. It's also clear that important legal issues need careful consideration. Things such as the suspension of particular legislative and regulatory requirements need to be considered. Immunity for health care workers and compensation for those who become ill during an outbreak are things we would suggest.

We look forward to speaking to those more as we have the discussion, but I'll just focus on a couple of issues, particularly the centralized authority. As a first priority, there's an essential need to ensure that the government have the legislative power to act as the central authority for decision-making. Everyone has spoken to it. The hospitals are saying this has to be the number one priority for us all. They then need to be able to identify the specific agency or lead person who will take the authority and execute it throughout the system, and they need to be granted the scope and powers to delineate exactly what needs to happen. This would stabilize the response and stabilize the hospital's ability to manage the situation.

The term "essential service" is also important to us. We think it's important that when determining what is an essential service, hospitals need to be designated as such. This would ensure priority to access the key things, such as water supplies and fuel, that help us run situations where we can continue to meet the needs of patients, both urgent and emergent. That was brought home during the power shortage.

Suspension of laws and regulations: During SARS it became abundantly clear to us that in some circumstances the existing legislative and regulatory requirements were an impediment to dealing with the crisis, as opposed to being enablers. This was the case with respect to transferring patients out of hospital beds to other parts of the system. If we are to respond effectively in the future, we need to address some of those that are described already.

Labour issues will always be contentious, but if you have a health crisis, labour issues need to have been

considered long before the crisis occurs. You can appreciate that there are many issues. What we learned from SARS is that what is needed is a process to bring together the various partners—union, management, government, ministries, associations—to address these very complex systemic and legal issues, but we need to do that long before the crisis hits. When the crisis hits, we need timely action; we don't need bringing a group together that hasn't worked together before or has only worked in distant relationships. Bringing that group together in anticipation and setting up a set of ideologies and legislative requirements will help.

An example of what we're talking about here would be the need for an expeditious ability to address the potential for work refusals. What do we do when someone refuses to work? What do we do when we broaden the definition of "essential worker"? We need to include people in the community if we are to have patients moved through the health care system, from hospital care into community care. Then there's the ability to waive some legislative requirements: hours of work and some of the other restrictions we have about where you can or cannot work.

Finally, there's immunity. Immunity for health care providers was a great concern during SARS. They wanted to know about their liability in an emergency situation, and they liked to have consideration for what legislation would be put into place for organizations and individuals who act in good will, so to speak.

Those are just brief issues we've discussed from a hospital perspective, and we look forward to further discussion of those.

The Acting Chair: Thank you very much. You were referring to Barry Monaghan. I know Barry is the person in charge of a unique hospital, West Park hospital, which has one of the few TB isolation units in Ontario. Are there others besides West Park that have special isolation units?

Mr Barry Monaghan: While you would have isolation rooms in facilities, I think the unique part of West Park's role is that it's the only facility in Ontario with a dedicated in-patient unit. From a physical facility perspective, it's designed for that.

Dr Basrur spoke to the Health Protection and Promotion Act, sections 22 and 35. We are often the folks who receive patients from across the province who require detention under section 35. Within our unit for tuberculosis, which is a locked unit, there is a sub-unit for detaining individuals who require detention over a period of time under section 35. That's part of the unique nature of the TB service. We are a provincial resource in that context.

The Acting Chair: I just wanted to bring that point to the attention of members of the committee, because it does relate to some of the issues we're dealing with.

Mr Monaghan: I can't help mentioning—I think I'm here as part of the OHA contingent and chair of the subcommittee Janet mentioned—that West Park was also the organization in the province that had the first SARS

unit established. We were the organization that received the staff members from Scarborough Hospital. We were up and running in a very short period of time.

It was because of our background and experience with tuberculosis and infectious diseases, plus the serendipitous opportunity of having space available—and the Ministry of Health representatives whom we deal with on a regular basis were aware of that—that we were able to set up the unit in about six hours and welcome those individuals for a period of approximately three weeks.

CITY OF TORONTO PUBLIC HEALTH EMERGENCY SERVICES UNIT

The Acting Chair: Our next presenter is Dr Bonnie Henry, the associate medical officer of health from the city of Toronto public health emergency services unit.

Dr Bonnie Henry: I'm really honoured to have the ability to speak to you a little bit about some of my issues around health emergency preparedness, but I'm also going to mention a few of the issues that have come up with emergency preparedness in general.

I do want to say that one of the first issues that came up when we had a conversation about West Park very early on in the SARS outbreak was, what was the authority for us to actually ask them to do this? Although it was a question, it was a very pertinent question, and it never stopped them from going full speed ahead in a really heroic effort, putting together that unit in a very short period of time.

My focus is from a local point of view. I work very closely with our police, EMS and fire services and our office of emergency management in the city of Toronto. We have a coordinated office of emergency management that involves health, but health involvement in emergencies is relatively new. It's relatively new as a player at that table in Canada and around the world. I think I'm the only person in Canada who actually has the position that I have. So we have started that process, but we need to go further.

One of the things we need to remember is that all the actual physical, hands-on management of emergencies happens at the local level. So while we absolutely need to have the authority and decision-making and a command-and-control structure at the provincial level—and I absolutely agree with that—the authority then needs to go to the local people to do what they need to do within their own local jurisdictions, because we know the quirks of our own jurisdictions.

Some of the problems we've run into, for example, are that under the Public Hospitals Act, hospitals are not necessarily required to be involved with their local emergency response organizations. That needs to be changed. There's nothing that requires them to be involved at the local level; they report to the province. That, I think, is an issue we have been trying to deal with.

The other thing we need to think about is that every emergency is chaos; that's the definition of an emergency. Whatever we can put in place ahead of time will

help us minimize that chaos, but it will not eliminate it. It's not possible to do that. We need to think differently in an emergency. We need to change our thinking from our normal, sort of consensus-building way of doing things to, "I need to know who is making the ultimate decision, and I need to act on that decision." That is a very different way of thinking.

1030

I really congratulate the province for starting their emergency management unit within the Ministry of Health, because that is one-stop shopping, I think—it should be—and it should be encoded in legislation that when a provincial emergency is declared, every part of the health sector needs to be organized and managed. The command-and-control structure needs to go through a very specific part of the ministry. Part of what we ran into during SARS was that different people were getting different information from different parts of the ministry. At one time, we had a discussion that every hospital was required to fill out five different forms for five different parts of the ministry or their local public health. That's duplication of effort, and it impedes our ability to have a coordinated and rapid response to things.

I also very strongly believe that we need to have coordinated control of the public health structure. Right now, medical officers of health are very independent and the authority is in a local physician. As Dr Low mentioned, that led to inconsistencies in response. I think that authority needs to go to the chief medical officer of health. I think the legislation needs to be changed to have the chief medical officer of health independent from the political process. The way the legislation reads right now, the authority to collect information is actually with the minister. I, as a physician, am not comfortable with providing personal health information to a political person, and I think that needs to be pulled away and given to the chief medical authority.

The same thing needs to happen with Emergency Management Ontario. The Commissioner of Emergency Management needs to have independent authority to make decisions accountable to, but independent from, the political process. I think there needs to be a parallel structure. I also very strongly agree that in a health emergency we're extremely lucky to have Dr Jim Young right now as the Commissioner of Emergency Management. He understands health emergencies. But we're not always going to have somebody there who is a physician with his experience. Health emergencies need to be led by health and need to have support from emergency management. In that case, EMO plays a support role.

A few other little things that came out: We have conflicting legislation right now about who has to do what in an emergency. I think that needs to be either umbrella legislation through EMA or we need to look at the Emergency Management Act, the Public Hospitals Act and the HPPA separately to rectify some of the conflicting legislative pieces.

We need to be able to license health care professionals, but we also need to think about other profes-

sionals whom we might need in other emergencies—experts in engineering, for example—who might be licensed in different places or in different ways.

Experts who are brought in to help and advise the province—we had the Ontario SARS Scientific Advisory Committee. We need to have protection of those experts, so that if the advice they give gets changed or acted upon or not acted upon, they are not personally liable for that. There needs to be something codified in legislation that allows you to have advisers who are brought in for specific situations but doesn't make them personally liable for the advice they give the government.

I think one of the really key things we need to work on is integration of emergency management programs at the local level. Right now, everybody is required to have an emergency management program. Health is involved to varying extents in different places but is not a major player at the local level. As well, we need to integrate with our neighbours. Our emergency management organization has a very different structure than does Peel, for example, but we share a lot of common borders and a lot of common issues, and how we do things is quite different.

I think the whole issue of hospitals and other parts of the health care organization being part of our critical infrastructure is something that's not well understood by people in the emergency side of the world—the people who look after critical infrastructure even at the city level. Hospitals are a provincial entity. Do they fit into us, or is the province looking after them? Who's going to make sure they get the power back on soon? Who's going to make sure they get the trucks to fill their generators so that patients don't suffer?

We need to do a couple of little things. We need to have the ability to take over radio or TV to give important public messages. We don't have that authority right now in Ontario.

We need to look at how we can prevent people from arriving or leaving. There is a federal quarantine authority, but that is only for people arriving from outside the country. We need to work on what kind of legislative authority we need to prevent people from entering or leaving Ontario. There's nothing in the legislation in our country that allows us to detain somebody with an infectious disease who wants to leave this province.

I think we need to look at requiring people—I'm thinking of health care workers personally—to work during an emergency, and we need to deal with some of the union issues ahead of time so that there's an expectation and an understanding of what's going to happen before the next emergency comes.

There are a couple of other things and then I'll be done. I think we need to embrace the instant management system model. It's something we've been pushing in the city of Toronto for quite some time. We're very pleased that the province has now made that mandatory at a provincial level. But we need to look at integration between how, when I set up my emergency structure in the city of Toronto's public health, every hospital fits in,

and then how we fit into the big picture at the provincial level. I don't think that work has been done yet.

I think we need to look at some authorities that we may need to have. One of the issues we ran into when we were dealing with suspicious packages—and you may notice that we haven't actually evacuated Queen's Park for quite some time because we put together a very coordinated response to this. But the questions arise. Somebody receives a threat in an office, a credible threat with a powder in it; they're covered in white powder and they panic and they want to go home. We currently have no authority to detain that person: the police do not and the medical authority does not. We can probably fake it and try and convince them to stay, but they could pose a danger to other people. They don't fit into the communicable disease sections because they're not actually sick with the disease, and they don't fit into the police sections at the moment. So we need to think about these situations.

I think I will leave it at that. One of the things we're concerned about is that the response has to happen first at the local level.

I have to mention funding a little bit. We have not received a single cent of funding from the federal government for emergency planning, despite an announcement a number of years ago about money being spent. The city of Toronto has spent a great deal on its own and it has had some support from the provincial government, but we need to start thinking about how to improve things at the front lines as well.

We need to think about a system where one mad cow in Alberta gets twice as much aid as the city of Toronto, which had 226 people who suffered with SARS. Thank you.

The Acting Chair: Thank you very much. Some thought-provoking comments by all. I was just thinking, talking about white powders and what could happen, we did invite Michael Crichton, the author of *The Andromeda Strain* and *Jurassic Park*, but he declined. We were given that by the 9/11 commission, which said that you have to use your imagination and think of the worst.

HEALTH PANEL

The Acting Chair: What we'll do now is begin with questions and comments from MPPs. The question or comment may be directed to one of the panel members, but if one of the panel members would like to add something or make a comment, just indicate to me and we'll certainly welcome that. We'll start with Laurel Broten, the MPP for Etobicoke-Lakeshore.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Thank you for your presentations. They were all extremely helpful to us.

I wanted to raise the issue of the need for involvement, or perhaps non-involvement, of the private sector. We had a panel of individuals from the private sector yesterday. I would raise issues in terms of the laboratories and whether there's anything in particular that we

should be thinking about on that front, or the pharmaceutical industry or other suppliers, in terms of the ability to get supplies during an emergency. If folks could comment on that, whether we should be turning our minds to those issues.

Ms Beed: In the SARS experience, Barry Monaghan and I had the privilege of being on the west conference call, which was a conference call of all facilities in the west end of the city. Making certain that we could secure supplies became an issue as soon as the United States became aware of SARS. They locked up all of the supplies for masks and for some of our gloves and gowns.

We need to be certain that there's a dedicated—

The Acting Chair: Who locked those up?

1040

Ms Beed: The United States. The companies predominantly come from the United States; their production is in the United States. So what we need to be certain of is that we have guaranteed supplies. When there was some suggestion that we might have a vaccine, or that we were close to having a vaccine, and when we were discussing the impact of some of the other challenges we might face, we could not be certain that Canada would receive any dedicated resources. So I think we need to figure that out.

Ms Stuart: We certainly were engaged during SARS around distribution of equipment and supplies, and also the gathering of them, and went to all continents, other than to Antarctica, in terms of accessing supplies. There is no domestic supplier, not just in Ontario but in Canada, of some of the masks etc that are needed in some kinds of emergencies. That's an issue that is broader than this committee or this province, frankly, but it is an issue.

One of the areas where we're actively working right now is with drug stores in terms of their ability to become our supplier across the province for non-hospitals, non-long-term-care facilities, so for community agencies, individual practitioners, because they have a very sophisticated distribution system, both with IT as well as the actual distribution. They can be anywhere in the province within 24 hours, and usually less than that. We see that as a real venue and we've had fabulous co-operation from them to build this kind of contingency plan with them.

Dr Low: I think that's a very good point about the laboratories. The private laboratories in Ontario are an incredible network of not only procuring samples from patients that we would need in an investigation but also of transportation of samples. I know that some issues came up in the private laboratories that some of the specimen gatherers were afraid to go into certain institutions. I don't know if it actually occurred where they refused to, but it raises an important issue as to what their responsibilities are.

Mr Monaghan: I'd appreciate making three comments about the private sector.

First, more broadly speaking, I think the private sector has to be engaged as it relates to securing the place of

health care facilities relative to access when systems are brought back up. I'll use telecommunications as an example. That dialogue needs to occur, and there needs to be an understanding of the priority that public services may receive vis-à-vis bringing telephone systems back up. Who gets access? The big cable companies, the wireless companies, the telephone companies, all of those should be part of the dialogue. So there's that broader private sector discussion that needs to occur.

The second has been touched upon, and that's the human resource piece. Within our health care system there are now a lot of private practitioners. You can include the medical profession outside of academic health science centres, where they may be engaged in a different relationship. But most physicians in the province are private practitioners, and they have relationships with hospitals. So when we think of the human resource strategies and the issues of essential workers etc, you can extend that to just about every other health care professional group: physiotherapists, occupational therapists etc. So that context needs to be thought of.

Taking that one step further, we also have to think about the network of private clinics that are in existence and are part and parcel of the health care system in Ontario. That's another piece of the equation.

Finally, and I think it's already been spoken to, is the network of lab services etc. Those are important components.

Dr Henry: Just from one other aspect that we were involved in, I do think we have to have the ability and the authority to engage not only the health sector in planning, from our point of view, but people like the funeral homes. The funeral home association was an extremely valuable partner for us in SARS. The care of people who have died from an infectious disease is very tricky, and they're very skilled at assisting us in things like that. As well, the religious groups in the community.

One group of people we've been trying to engage in planning for emergencies is the hotel and restaurant associations. Prior to SARS, they didn't feel they had any role in this and didn't think it was going to affect them at all. I think that now they are much more willing to be engaged with us. But they need to also look at how they can contribute to emergency response, not only at how it affects them. I think we need to have some bit of authority to engage that part of our community as well in planning.

Ms Broten: Thank you. Can I have one more question?

The Acting Chair: OK, and then Mr Dunlop, Mr Brownell, Mrs Sandals and Mr Zimmer.

Ms Broten: I wanted to pick up on something you said with respect to information. I'm wondering whether or not, Dr Basrur, there are technological solutions to some of these issues, in terms of the information, and whether there are any other jurisdictions we can look to for guidance that may be steps ahead of us, or not, in terms of that double-blind system, where you can have tracking of infectious diseases or other things. I'm not

sure what capacity we have in the province but I'm wondering if you had any thoughts as to other jurisdictions we might like to look at.

Dr Basrur: The province is actively in discussion with other jurisdictions, particularly Quebec and BC as provinces that are farther ahead of us in public health infrastructure from a provincial resource to support the local level. As you're aware, there is a commitment of the government to create a public health agency and to renew our infrastructure and all the rest of it. We're in discussion with those two provinces.

With regard to information collection, use, storage, disposal, the whole life cycle of information, there is a technological aspect to it. But first and foremost are legal authority, policies, protocols, safeguards, roles and responsibilities, access and privacy, and then all of those things would apply, whether you're doing paper and pencil or a very complicated computer system. Both ends of it need to be properly dealt with.

Mr Monaghan: Can I just make a comment about technology in a broad context? It should be interesting to all of us that if I send a courier package to a family member in Ottawa and it goes missing, the FedEx or Purolator or whoever can trace that and in most circumstances can tell me exactly where that package is.

In the instance of SARS and public health and the tracking that had to be done, in a perfect world I would see public health folks walking around with a hand-held device that enabled them to track people and have a database and access to that database. When it came to hospitals having to have people at the front door to meet and greet people, a couple of hospitals—and Janet, I think it was Kingston General—within a matter of about 72 hours put together a computer program and system that enabled them to do that electronically. Most of us did it by paper.

I think the overarching comment is that technology becomes a very important enabler in terms of communication, businesslike processes and keeping the flow going. I think that's an area that needs to be attended to. There may be legislative elements to that, but I think it also speaks to the nature of the investment we're prepared to make in the infrastructure.

Dr Basrur: Thank you very much, Mr Monaghan. The only caveats I would add are that the requirements that need to be in place for government agencies may be distinct from those that are non-government but broader public sector.

Second, if you're speaking of regulated health professionals collecting, using and disposing of information, there's a different duty than on those who are not regulated health professionals.

But, absolutely, I agree: The more easily we can collect and use this information for a good purpose—we're all for it.

The Acting Chair: Dr Henry.

Dr Henry: The one other caveat I wanted to bring up is the whole protection of privacy of health information. As you know, Bill 31 is going through the legislative

process right now and it will in some ways severely curtail our ability to actually track and monitor certain diseases. I think we need to build our IT systems around protection of personal health information, but also somehow strike the balance between being able to use that information for the broader good and the prevention of transmission of disease. Right now that balance is a little unclear.

1050

Ms Broten: Thank you very much.

Mr Garfield Dunlop (Simcoe North): It's nice to hear all the comments. I wanted to first of all thank you for the work that was done last summer in basically two tragedies, SARS and the blackout, and for being here today to help us through this.

My question really is for Dr Henry. I was interested in your comments about your position being one of the first in the country, I believe, your role. You clearly suggest that there should be legislative changes made to help people like yourself and other, future people who will be taking over jobs similar to yours across the province and across the country.

When we were listening to the police officers etc in the last few days, we heard more about additional dollars being required for training and communications and this sort of thing. There didn't appear to be a lot of issues around new legislation. I guess in your new role, you're saying there is that. Are you saying the legislative changes that may be required should be dealt with from all aspects of provincial emergencies as well? By that, I mean police, fire, EMS, any of the organizations that would, anywhere in the province, help with the tragedy or emergency.

Dr Henry: I'm not sure I understand your question. There were certain aspects of a variety of different pieces of legislation that I think are in conflict right now about specific roles during an emergency. They either don't address it or they address it in a conflicting way. I think those need to be sorted out.

I was particularly talking about the health legislation pieces at the moment, but there are some aspects that need to go, I think, into the Emergency Management Act, as an umbrella act, that specifically say, "Under certain circumstances, these things are overridden and the authority is given to the command and control"—

Mr Dunlop: What I'm suggesting is that as Canada's largest city and the largest city, of course, in Ontario, you see the legislative requirements that would help you in the city of Toronto. But when we change the legislation, the legislation would be able to impact all municipalities or all jurisdictions here in the province. That's what I'm trying to say. You see that need, and you see that need working with police and fire, everyone that you work with. I'm assuming they are all part of your organization.

Dr Henry: I work for Toronto public health, but part of my job is coordinating very closely with our police, fire, EMS, and our office of emergency management.

Mr Dunlop: Do they see a need for change?

Dr Henry: I believe they do. We've certainly had the discussions on a number of occasions. One of the things

that our relationship has fostered is the ability to understand each other's roles a bit better. For example, the Toronto Police Service was extremely helpful to us. As a matter of fact, when the outbreak happened in Toronto, the deputy police chief said, "What can we do to help?" That is, I think, a monumental change in attitude, and we are probably the only jurisdiction in Ontario where that happened. Certainly in some of our neighbouring jurisdictions, police said, "We have no role in this." Developing those relationships and understanding where each other's authority and responsibility lie makes a huge difference in allowing you to respond in a coordinated manner.

There are specific pieces of legislation, and we've discussed this: Who has the authority to detain somebody who's not actually sick but might be a hazard, but we don't know? Who has the authority if we have a section 35 order on somebody who is sick with tuberculosis but they are in their private home? Nobody has the right, right now, to go in and actually get them. We can't do that. Should we have that? I don't know. I think those are authorities that need to be looked at very closely in the legislation. I don't know if that answers your question.

Mr Dunlop: Yes, that does. If anybody else wants to add anything—

The Acting Chair: Dr Basrur wanted to comment on that.

Dr Basrur: Dr Henry's observation that hospitals and other health institutions, long-term-care facilities and others, conceivably, need to be mandated to participate on a municipal control group or in a municipal emergency preparedness context I think is a very important observation. We had always assumed that because hospitals were great big, well-funded, well-run institutions—and they are until an emergency hits—they would have all of the capacity they needed to manage their affairs, particularly when it was an infectious disease within their four walls. And that wasn't necessarily the case, because these diseases don't just stay within one institution's four walls. They can travel in and out of them on the hands of workers, patients, families etc.

The other observation is that when a health emergency or even a perceived emergency hits, it's not just limited to the health sector. It cuts a swath through the entire community, as we saw during SARS, during the power blackout and so on. No one is immune, everyone needs to be involved, and having the traditional approach of emergency equals police, fire, ambulance and maybe some utilities needs to be shifted into the future.

The third thing I would note is that Dr Henry's position is unique, probably born of the fact that right after 9/11 and the anthrax scares, the city applied for JEPP funding, the joint emergency planning program. So we got some federal and provincial money, time limited, but it was a priority for them—me at the time and them still—to ensure that we had a focus for emergency preparedness at the public health level, because it was otherwise missing. That's not to say that every single health unit in Ontario should or can have the resources to

put into someone of Bonnie's expertise and calibre, but it ought to be resident in some accessible fashion.

So as we go through our moving forward from a provincial public health standpoint, we're going to be looking at how best to organize and deliver public health services across Ontario. Just to blue-sky it, it may be the case that some elements of critical skills sets—and I'm not speaking of any individuals here but just speaking of functions—may need to be deployed at a regional level in certain areas so that you might have access by local public health units to public health physicians who have greater than usual knowledge of chemical, biological or radionuclear threats, for example, or who are intimately familiar with the incident management system. So you don't have to have a Bonnie, or a quarter of a Bonnie in some of the smaller health units, but you've got access to people like her and in a similar fashion so that we can have a more coherent system across the province.

Dr Henry: Can I add one more thing? One of the difficulties we run into is that Emergency Management Ontario, as an organization, does not have health care expertise and does not understand the health sector role very well, in my experience. I think that needs to change. That is a policy part of what they do, I assume. But currently, the way they are configured, they are clearly on the side of police, fire, EMS, and sometimes not even EMS, in the way they think about emergencies. They assume that the medical officer of health is speaking for all of the health sector, and I don't think that assumption is a fair one.

Mr Brownell: Thank you for your presentations this morning. An excellent dialogue and ideas for our committee.

Dr Henry, you commented about working together, that there are common issues but there still are issues that divide, hospital to hospital, where we have to work together. I'd like to use that as a stepping stone for looking at the geographics and the size of health units, hospital jurisdictions and whatnot and issues that might hinder the delivery of emergency services. As an example, I know we have EMAT and rapid response teams, but are there throughout Ontario challenges with regard to the delivery of services in those large geographic areas? I say this because I come from a large geographic area with a public health unit—for example, Stormont-Dundas-Glengarry and Prescott-Russell. It's just huge. I lived through the ice storm. I was the brand new reeve of a new community that had not taken to emergency plans, to even put together, so we had challenges there.

1100

Are there challenges with regard to geographics and the demographics? Take, for example, massive geographic areas and health unit areas in the north, and even the First Nations concerns and whatnot. Can we get a little expansion on ideas with regard to some of the challenges there? I open it up to anyone.

Dr Henry: I guess I can start. From our point of view, there are real challenges. I think that's where we're

talking about needing a central authority, particularly during an emergency. For example, we have 22 hospital corporations in the city of Toronto. Many of them have sites outside the city of Toronto. The Rouge Valley Health System has two in Toronto and three outside of Toronto. If we are doing things differently in two different health units, that can be very difficult for a hospital.

It's the same if we look at our mental health system, our community care access centres, our district health councils, our long-term-care facilities. They are all, if you want, regionalized or organized on different geographical and jurisdictional boundaries. That can create massive difficulties in dealing with an emergency, and it's not limited to the health sector. It's similar in many other parts of our organization as well. For example, one health unit may actually involve several different municipal police services plus the OPP.

We need to think about, in an emergency, having a central command and control authority where everybody knows, "This is where the ultimate decision is made." So if I have a disagreement with my colleague in Durham region about how we're going to manage a situation, then it's incumbent on the chief medical officer of health to say, "This is the decision. This is how we're going to do it," and then it's my job to do it consistently, because in an emergency you need to have consistency. I don't think it's limited to the health sector. That's starting to be addressed under Operation Health Protection. Some of the things the Ministry of Health is doing are starting to address that.

I would also like to see at a provincial level—right now we have mutual aid agreements with our neighbours. Our police service in Toronto has mutual aid agreements with York region, Durham, Mississauga and Peel. We have agreements with some of our neighbouring health units for exchange of people in an emergency. I think that needs to be at a provincial level. There needs to be a blanket agreement and organization for an emergency that allows you to move people, and that should be the primary function of, I believe, the provincial level; that is, supporting the front-line people who are actually managing the day-to-day parts of the outbreak, and being able to coordinate the supplies, the people needed for the emergency.

Ms Beed: I think we truly experienced the diversity of our health care system in SARS when we implemented directives that we thought would assist the system in creating capacity to accommodate the SARS patients, both actual and potential. One of the directives was the elimination of all elective admissions so that you could create capacity. What this did in some hospitals was create occupancies of less than 50%, and in other hospitals it didn't touch their occupancy at all.

The diversity of the health care system and the diversity of the hospitals across the health care system exists for a reason. It exists because we've evolved such that we can meet various health care needs of a broad spectrum. In an emergency, it is a bit of a liability or a difficulty. When we do promote a centralized health

authority, we recognize that the agency that they then appoint to lead the emergency has to have access to the diverse nature of the hospitals and the supports that go with it.

Mrs Liz Sandals (Guelph-Wellington): Thank you very much, all of you. You've been wonderful in saying: "Here are the issues and here are some solutions to the issues." Thank you to all of you who have given us very thoughtful presentations this morning.

I've got a whole list of questions. My head's just spinning. Can we start with the thorny issue of information collection? I hear frustration on the part of Dr Basrur and Dr Low in terms of trying to get access to information. I hear some concern on the part of the hospitals about where the information is going and who is going to have access to it. If we were going to look at an emergency authority to collect information, who should have that authority? Where should the information go? Who should have custody of it? How can it be used? How should it be retained? I think if we're actually going to look at those sorts of authorities, those would be the sorts of issues we would need to be thinking about.

Dr Basrur: Yes, it's true. It is a very large policy area, with many people who need to have an opinion expressed: everyone from the operational and program and policy folks through to the Privacy Commissioner, the Ministry of the Attorney General. You can imagine the number of legitimate voices that need to be at the table to scope out what should be thought through in a thoughtful way that still, at the end of the day, helps you actually manage the emergency.

As they say, if you have three forms in quadruplicate that have to be filled out and legal agreements reviewed to make sure the thing you signed three years ago covers off this eventuality, people will die before you've figured it out. So there has to be some balance between clarity and simplicity and reasonableness and safeguards.

It is a big area, and I would suggest if that is to be dealt with in the proposed legislation this committee is charged with drafting, it's an area worthy of its own sub-investigation just in and of itself.

The Acting Chair: By the way, we are having the manager of legal services from the Privacy Commissioner's office coming in. Mary O'Donoghue is coming in this afternoon.

Allison Stuart wanted to make a comment.

Ms Stuart: While there are issues that are specific to patients in terms of personal information about patients and how they're faring, there is other information that's required in terms of managing an emergency that doesn't have that same element of confidentiality. We're probably wise to recognize that split, otherwise you can make it more cumbersome for one group of information when it's not really required.

One of the initiatives we have underway right now is to try and develop a common data set of information that would be required in any emergency. People would know it in advance and could plan for it and so on. The difficulty is, of course, everybody agrees with the con-

cept as long as all the data they could possibly ever want is included. So we're doing some research on that right now and then we'll bring it to all the stakeholders who have to provide that information in terms of does this fit, is this doable?

The other side of it is, the Ministry of Health and Long-Term Care—I won't speak for other ministries—has been known to require a lot of routine information from the health care provider sectors.

One of the things we need to look at is, in an emergency, what do we stop requiring? What do we say no to that we'll put in abeyance for the duration of the emergency, given, we assume, limited human resources to actually compile the information.

Thirdly, how do we ensure that we streamline it so we are not—as Bonnie pointed out, we ask for the same information three times, but just slightly different, so you can't use the information provided the last time. How do we streamline it so it goes through one window and then the distribution occurs from there?

All that is underway. We're not there yet, but we've got the research underway.

1110

Dr Low: It's such an important area, and I don't know what the answer is. For example, during the early phases the CIHR—our old MRC—provided funding to do research, and we had spinoff groups. So we had different groups of individuals who were starting to do some research and then other groups of individuals. What was happening was that the same patients were getting approached by three different groups. At the end of the day, all that information is held tightly within those groups, not shared between them, and therefore we don't learn from it. So it not only slows down the gathering and processing of information but also the sharing it. It's very difficult.

We got a request yesterday from groups from China, as well as—who else was it, Bonnie; was it the Chinese group and the UK?—looking at trying to create a consortium to look at criteria for how infectious this virus is, which is very important, because how do you deal with it next time with regard to quarantine and so on? When Allison McGeer and I looked at it, we thought the best thing was, let Bonnie look after it.

Mrs Sandals: So, suffer all the insoluble problems.

Dr Low: It's going to be such a dog's breakfast dealing with the politics of gathering that information so we can participate in this exercise. We can't just wall ourselves off and not share information with the rest of the world, but this is a huge difficulty.

Ms Beed: I'd also like us to consider the impact of data that are required by the employer of the employee or of the person who is contracted to work within the institution. In the SARS situation, each day we would have a sheet up that would say, "If you have worked at the following hospitals, you cannot come in." We are not permitted to know where our employees work, in addition to our current location. In a world that contains risk or is prone to infectious diseases, I think we need to

ask the Minister of Labour if there is a way we can work around that a little more effectively, both for our employees and for our physicians.

Mrs Sandals: Or at least in an emergency situation.

Ms Beed: At least in an emergency situation. When you're in an emergency situation, gathering those data—my hospital employs 12,000 people, and it sure would be handy if we had that information and maintained it in a confidential fashion for use only in an emergency situation.

Mrs Sandals: Which actually sort of segues into my next question: There have been several comments around the definition of "essential worker" and whether the definition of "essential worker" needs to be different in emergency circumstances than in normal circumstances. Is there a simple way of approaching that? I'm thinking that within health, for example, you may look at public health workers as essential during an emergency situation where normally you wouldn't. In some other sort of emergency, maybe the utility company workers—Bell Canada workers or something—suddenly become essential workers. Is there a generic way of dealing with this problem in emergency situations, rather than trying to second-guess ourselves, anticipating where the next need for essential workers will be?

There are all sorts of people here. Why don't you just go around?

Dr Henry: I'll start. I think that is an extremely important question. I think that powers need to be given to the Commissioner of Emergency Management to designate people as essential workers during a declared emergency. I also think we need to review who is considered an essential worker in everyday terms. It is inconceivable to me why our emergency medical services workers are not essential services. I can't understand why they are not designated as essential services. That is very disruptive in terms of a variety of different day-to-day aspects. So I think there are two levels and that those are authorities that should be given to the chief medical officer of health and to the Commissioner Of Emergency Management

Mr Monaghan: Bonnie has articulated one aspect of this, but you asked, is there a simple way to determine? If I need you, you're essential. I'm not being facetious. On a very practical basis, during the SARS experience, we were, as hospitals, advised to send people home who weren't essential. How do you determine that? Well, as a management team and with your clinical leadership, you sit down and say, "Who do we really need? Who do we need to have on-site?" whether it's someone at the bedside or somebody in supply management etc. So at one level, if you're needed, then you are essential. I appreciate that there has to be a more specific identification of occupational groups that must respond in an emergency, but that's not a bad acid test, to be honest.

Dr Basrur: I think the hallmark of being ready for an emergency is not knowing what's going to hit you next. So yes, the ice storm showed that there were certain kinds of people, services, supplies and equipment that

you'd never expect you'd have to draw upon at a moment's notice, like chainsaws, for example. The power outage: a very different set of circumstances. We didn't realize that we would have trouble pumping water up to the top of high-rise apartment buildings, for example. In SARS there were other situations that occurred.

I think it would be ideal to identify who best should exercise that kind of decision-making authority, whether it be the Premier, delegated by the Premier to the commissioner, the commissioner in his own right, with a reporting-out obligation, or any combination that you wish to think of, but without limiting the numbers or the scope or the types of workers or services that we may need to call upon as a province to mobilize and manage. Because when you need it, you need it yesterday, and things don't often happen quickly. They need to in an emergency.

Mrs Sandals: So there would be general agreement that some sort of emergency power to designate essential workers would be something that needs to be vested in someone.

Dr Basrur: With respect, whether it would be workers, services, supplies, supports of some sort, you can't predict what you're going to need and what the best rubric is to classify it. But have it clear as to who does make that call, what process etc, and then keeping it as fulsome as possible so that they are not constrained when they need that the most.

The Acting Chair: We're going to try to give other MPPs an opportunity, so if we have time, we'll get back to you.

Mrs Sandals: That's fine.

Mr Zimmer: We've heard a lot this morning. I think Mrs Sandals said her head was swirling, there were so many ideas and priorities around.

Earlier this morning, Dr Basrur made the hopeful comment that if there's a will and a need, things can get done quickly, and you followed that up with your most recent comment that your big challenge is not knowing what's going to hit you next. So my question is to Dr Basrur in her capacity as a medical officer, and then the same question to Ms Beed in her capacity as a hospital CEO and to Dr Low in his capacity as a disease scientist, if you will, a microbiologist.

If you looked at everything, all these ideas that are floating around the table this morning, what would your three priorities be, if you could have three priorities of things that this committee might specifically address itself to tomorrow?

Dr Basrur: Can I go last?

Mr Zimmer: She also wants to go first. I know there are probably 15 priorities, but if you had to pick three, looking at it from a chief medical officer of health's point of view rather than as a hospital head or a scientist—

Dr Basrur: I think there are a few things. One of them is the authority to issue directives. It really is surprising, after all this time, to still hear—and it's the truth—that the directives were voluntary. It's a bit like public health

having mandatory guidelines enshrined in law. Well, what are they, mandatory guidelines? Voluntary directives? It's silly. If these are meant to be rules that are to be followed by all institutions to whom they apply, then there ought to be a clear authority, a person who issues them, a monitoring system and a consequence for not following them.

It's the consequence that's the hardest. At this point, I suppose you could say the directives were mandatory because the hospitals are funded by the province, but I daresay the province wasn't inclined to go and withhold West Park's funding if they didn't open a SARS unit. It just would be cutting your nose to spite your face.

1120

Mr Zimmer: So a clear authority is the one priority.

Dr Basrur: That is number one.

Mr Zimmer: Second?

Dr Basrur: Second is the roles and responsibilities amongst all three levels of government, with particular regard to the shared services agreements or mutual aid agreements across jurisdictions, in relation to people who may not be licensed to practise the profession for which they're trained, but for whom we need all hands on deck. So some sort of an expedited mechanism with supervision and so forth will be very helpful.

Mr Zimmer: Third?

Dr Basrur: The final thing would be a provincial system for a health care response in an emergency that is planned out and tested, and tested not just by the province in one room and the local municipalities doing their own thing in their own rooms and the feds doing heaven knows what, but actually integrating all of it. Because when an emergency actually hits you, especially if it's on one of the provincial borders or an international border, you can't help but say, "Yes, it may be local to Windsor, but it has international implications"—there's potential contamination of a waterway or heaven knows what the issue is—so let's practise now, before we have to run through it. Those would be my three.

Mr Zimmer: Ms Beed, from the hospital CEO's point of view, your three priorities?

Ms Beed: Our first would of course be the same, which is a central authority that has clearly delineated powers to execute direction, so that—

The Acting Chair: Janet, if you could speak into the mike—

Ms Beed: Clearly delineated authority that has powers to execute within its domain is our number one issue.

The number two issue for hospitals is labour: making certain that we can have preliminary discussions and understandings about how you can work with your labour market in a crisis. That would include being able to bring in staff from other provinces, being able to change hours-of-work legislation, being able to work with different regulations on who does what work. That really impeded our ability to meet the needs.

The third is that hospitals must be designated as an essential service so they are a priority for being put back up when electricity or telecommunications go down. They have to have priority over some of the other areas.

Mr Zimmer: Dr Low, as a microbiologist?

Dr Low: Yes, I think I agree with all of them. A clear authority, I think, is number one, as you've heard, and critical; and not only having a clear authority but the resources to back that up. If you don't have those resources, then you really can't take advantage of that authority. Finally, being able to draw on the expertise to support you, whether that expertise comes locally, nationally or from other countries, is critical, especially in a setting such as SARS or pandemic influenza. The problem with dealing with these outbreaks is the sustainability of them. We can handle it for a week, but we can't handle it for two, three, six weeks. We need the expertise.

Mr Zimmer: What are your three priorities?

Dr Low: I think it's the central authority, the resources to do this and the access to expertise. I think Allison Stuart pointed that out in trying to facilitate bringing in experts and giving them the temporary authority to do what they're trained to do.

Mr Zimmer: A comment from Bonnie?

Dr Henry: I guess the only other comment I would make on top of that is, in terms of legislation—I'm just thinking as a health care professional—I think it's really important to me to have an emergency management organization and a health emergency management organization that's independent from the political process.

Mr Zimmer: That's your number one priority?

Dr Henry: Yes.

Mr Zimmer: The same question to the ministry.

Ms Stuart: Well, actually, I will confess that Dr Basrur took my three priorities and used them up. So I would reinforce the brilliance of Dr Basrur's recommendations.

Mr Zimmer: Thank you, Mr Chair. I just thought it was important to get some ranking of everything we've heard this morning.

The Acting Chair: Yes, I think that's critical, because there is so much on our plate here and trying to make priorities is critical for us.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): I want to explore something at sort of the highest level in addition to health. We've heard from a number of expert panels so far and the discussion has been absolutely fabulous. One of the issues that's always there but doesn't get the level of attention in the discussion is, who is in charge? Would it be helpful in legislation—and I don't know whether it's there; I don't believe it is—in the declaration of an emergency if it was more clearly defined?

I'll use only three categories, although there are probably others: a health emergency that might create a flow chart and a lead in the context of who is in charge; a natural disaster of some sort—natural or man-made, and I'll use the blackout as an example of something that's more natural, that might have the Commissioner of Emergency Management and EMO in charge potentially; and 9/11, which might create a different environment where it's a security issue now. Would it be helpful in the

legislation if it was better defined as to the nature of the emergency such that the lead agency and the individuals who had authority in the flow chart would be better able to exercise that authority? Would that be helpful?

The second area is this issue, in part, where we talk a lot about suspension of civil liberties to one extent or another during the time of emergency and the question of the political engagement in that. The issue has been raised, by Dr Henry primarily, about whether or not the political body should really be hands-off to that, and, as part of that decision-making and authority, at what point should the responsibility default to the political body, whether it be the Premier or the Legislature, or should that authority be retained in the professionals who are designated for that purpose, whether it be in health or emergency planning or policing, as an example?

Any comments you might have on either of those two perspectives would be helpful for me.

Dr Basrur: Could I weigh in first? I would say that sometimes it is really clear-cut who is and who ought to be in charge and sometimes it's patently not obvious. Clearly, you would like to have a scheme whereby where it's clear, there's no argument, and where it's not clear, you've got some mechanism to make it clear. Because you don't know what's going to come around the corner, you can't make provision for every eventuality, in law, in statute, in regulation or otherwise. But you need some sort of process and determination of who is going to do that.

My understanding is that the Ministry of Health is the lead agency for infectious disease emergencies, which are typically called outbreaks or epidemics or even a pandemic, depending upon the scale of it. But there will be many other impacts right across the city, whether it be, "Is it safe to go on the subway system?" or "Should non-essential people stay home because we need the roads clear for the ambulances?" There's a whole host of other issues that come up even if the original hazard happens to be an agent of a communicable disease, but generally speaking, the Ministry of Health should be the one. For infectious diseases, the lead is the public health division, and the chief medical officer of health particularly.

In relation to Dr Henry's point about separating at least the public health response from the political process, as you're aware, the minister has committed to introducing legislation this fall that will give the CMOH the necessary independence to protect the health of the public and will, subject to the will of the House, reassign the authority that is currently with the minister to the chief MOH. There are a whole lot of "ifs" in terms of that legislation passing and so forth, but that would be the government's intent, to make sure that the officials who actually have to run the show have the authority they need and that there's not even a perception, much less a reality, of political interference or having to go through 10 hoops to get approval to do a press release to warn people that their health is at risk. That's just a sensible thing to do, I think.

1130

The other thing I would note is that sometimes you have an incident that waxes and wanes in terms of who ought to be the lead. I hate to use examples that are not my domain, but in the police/fire/ambulance area you might have an incident where a building collapses—first and foremost a rescue operation that one particular service takes the lead for, let's just say fire, but there's a tremendous requirement for EMS and perimeter security and so on for the police. It may be that over time, I don't know, a looting issue comes up and then the police become the lead for that. I'm just giving you some examples of where you can have more than one agency needing to be the lead as situations evolve, but the one that has foremost responsibility ought to be the lead and the others do their parts in concert with that overall response. So in the incident management system, if I or my designate is the incident commander, there would be a whole series of operational responses, public health responses and conceivably other responses as well. They would all be planned and carried out under a public health lead to the extent that infectious disease is the thing we're trying to get control over.

I don't think it's wise to try to enshrine that in legislation, because it's too much; people don't want to go and revisit it in a big hurry. Maybe regulation, maybe policy directives, guidelines or other instruments would be a more appropriate mechanism by which to try to articulate those roles and responsibilities. Frankly, every time you have an incident, you learn a lot of stuff you didn't know you didn't know in the first place. You may want to revisit how you've set out those responsibilities anyway.

The Acting Chair: I have a question much along the same lines as MPP Zimmer had. All of you here, for the most part, were involved in the front lines of an historical event, a chaotic event, that had to be managed: the SARS situation. We, the committee, are charged with looking at statutes and legislation that exist to try and ensure these statutes meet the needs of future outbreaks of something. As we keep saying, it's not if it's going to happen; it's when it's going to happen. Therefore you've been through it right there, front and centre. Just again to be very emphatic about this, we're going to come up with a piece of legislation here enhancing emergency preparedness. What do we need to do?

First of all, you mentioned directives. The directives right now are essentially voluntary. In other words, the chief medical officer of health doesn't have the authority to order a hospital to undertake A, B or C. Is that clear?

Ms Stuart: During SARS—and I think that yes, we were all involved with SARS—the power to issue directives was deemed to be part of the powers of the chief MOH under the HPPA, the Health Protection and Promotion Act. Others have challenged that, not in a negative way but in a critical way, in terms of whether that was really the intent of the act and whether some of the directives went beyond that which could reasonably be deemed to be within the purview of the chief medical officer of health.

That's why at this point providing greater clarity about the ability to issue directives before, during and after—because some of the directives we may wish to use beforehand speak to some discussions today around the need for people to be ready, the need for us to have a common approach etc. So the ability to provide that kind of thing in advance may be important, just as in the recovery period after an emergency there may be a need to have some kind of directive.

The Acting Chair: But in layman's language, those directives right now are in a grey area. They're open for dispute.

Ms Stuart: Absolutely.

The Acting Chair: So you're asking us to try to make this more definitive so there isn't the potential for questions or interpretations. You're saying you need that to get the job done.

Ms Stuart: Could I just add one more comment? When the local hospital or long-term-care facility or whatever is asking, "What's your authority?" part of that is not because they're arguing the import of doing it, but what gives them the authority to go ahead and do what we've asked them to do? It's really that they need it for their own protection as well.

The Acting Chair: Right, their own liability.

Ms Stuart: Yes. It shouldn't be seen as a criticism of the service providers. That was not the feedback we got from most people—not from all, but from most people.

The Acting Chair: I think you make a very good distinction.

Barry, did you want to comment?

Mr Monaghan: When I was travelling down here this morning, I was thinking, "What an onerous task this is." At the end of the day, what you're trying to do and will do, and should do, based on our experience with SARS and other issues outside the jurisdiction of Ontario and in the province, which we may have to deal with, is really to look at the manner in which legislation currently exists and how to better integrate it to deal with emergencies we may face in the future, and to ferret out the inconsistencies; and to call upon people like us to offer up our observations and recommendations, and pull together something that will work in this decade and beyond so that the mechanisms below the level of the legislation can be in place and so that the clarity around roles and responsibilities, the single authority—all the things we talked about—are there.

Overarching that is the challenge of recognizing what might be perceived as changes or infringements that I, as a citizen, might have to put up with if necessary in an emergency, which are temporary in nature, and recognizing that there are many challenges, not the least of which are charter challenges and privacy legislation challenges, which will have to be countenanced in the legislation so that it's not challenged before it's even declared for a month. I think that's what you've got to do.

The Acting Chair: The other question I have in the area of carrying out your duties and the people who make

up, you know, the 12,000 people in a hospital: Is there a need for some kind of enhancement of a good Samaritan provision in emergency legislation? In some cases, there would perhaps be a reluctance by someone to undertake a certain activity, given the question of whether they are liable in the long run for an act that is undertaken. As you said, if there's a directive given to a hospital, and the hospital proceeds to follow through with some directives, they feel, "Well, I could be liable, as the CEO or as the doctor in charge of a department." Would that be necessary?

Mr Monaghan: I think it's absolutely essential that it be countenanced from both an individual and an organizational perspective. There has been an example, in the SARS experience, where an organization steps forward in good faith, does its very best under very arduous circumstances at a time when there was very little knowledge of the disease, etc. After the fact—again, carrying out the duties as required by the Ministry of Labour—there was the potential for that organization to be charged under existing laws. It didn't happen and hasn't happened, but it could have happened. That whole context of operating in good faith, stepping up to the plate and not finding yourself, either as an organization or individually, at threat—there are tests of whether or not, in good faith, you've operated within the boundaries of knowledge and expertise of a circumstance at a time, and those principles can be included. But the fundamental principle you're raising in a situation such as a major crisis is a consideration that ought to be included in the legislation.

1140

Dr Henry: If I could make a comment on that, I think one of the things we learn over and over again in a crisis is that you can never do just enough. If you stop the outbreak, you've done way too much and you overreacted; if you don't stop the outbreak, you clearly didn't do enough. I don't think there's any way to legislate the ability to do things in good faith. It's a really difficult situation that we're put into. We're now dealing with at least three class-action lawsuits, none of which, thankfully, has been certified yet and all of which name the city of Toronto for doing too much. I'm actually quite proud of doing too much, the perception that we did too much. I think we did what we needed to do under very trying circumstances, and understanding that the need to protect people from lawsuits for doing what they feel is right and what is supported as right or—I'm not being very articulate—what is being done to the best of their ability and knowledge to try and control a situation that's extremely dangerous, needs to be enshrined in legislation. People who are asked by the government to help, to provide advice, whether their advice is taken or not, need to be protected from liability. I don't think the Good Samaritan Act is the same concept. I think the Good Samaritan Act is pretty good, for what it does. It protects people for different situations.

The Acting Chair: Actually, it's basically nonexistent in terms of its powers in Ontario. Anyway, I appreciate that comment.

Just one last comment before I give it to Ms Broten: I guess the other thing you keep on reinforcing is that there needs to be a definitive designation of leadership in an emergency. You feel that during the SARS outbreak, that leadership designation was not defined clearly enough in existing legislation, and it was done on an ad hoc basis, you might say. So there needs to be a formal way of designating, a process, at least, where someone, whether it's the Commissioner of Emergency Management or the chief medical officer of health, through the Premier or through cabinet or through the Lieutenant Governor in Council, is given some designated, defined authority to act. That is not in the legislation that we have before us in the province of Ontario. Am I clear there?

Dr Low: Is there also the need to have resources to go with that, though?

The Acting Chair: Or at least to allocate or to commandeer resources and do whatever is necessary to get the resources to undertake those designated duties.

Ms Broten: One of the issues that was raised before us on a previous day was the interface between human and animal disease that we're seeing. I wondered whether Dr Basrur or Ms Stuart would want to comment on a suggestion that we should have a chief veterinarian in the province who also has significant authority to act and then liaise on zoonotics or those types of interface that we're starting to see now.

Dr Basrur: I think that makes abundant sense, for the reasons that were likely provided to you previously; absolutely. It's a recommendation of the Haines commission, first of all. Second, yes, there is very much an interplay between animal health and human health, both on a case-by-case and potentially on a broader scale.

The Acting Chair: Dr Low, you wanted to comment?

Dr Low: That's a great observation. We've been involved, working with the University of Guelph in a number of examples of new zoonotic diseases. But another area that is important is the importation of animals and regulations as to what's allowed to come into the province. I learned from what we heard with monkeypox last year that at least within the United States there's really no restriction on what you can bring into the country, from what country it can come, and the potential then for disseminating it afterwards—no controls, and no way of tracking it. There are a whole bunch of issues that would be raised in this area.

Ms Broten: The other issue that was raised to us—and I think we've talked a lot about responding to situations today, but is there any difference, in your mind, in terms of the lack of authority with respect to mitigation and prevention, or would you say the same powers were necessary? Certainly in the health sector, as you respond you're mitigating and preventing all along, but at an earlier phase do you lack any authorities or powers or have any suggestions as to how we could assist even that one step earlier?

Ms Stuart: In terms of mitigation, much of the work that goes on there is work that you have to negotiate ahead of time so as to have the right plans in place,

obviously, when the emergency happens. I would anticipate that the ministry will be moving toward a position where we will be able to indicate our expectations of each organization and what those expectations are. Whether that is done through policy direction, whether we attach it to financial incentives or disincentives or whether we call it a directive, I'm not sure, but I do think we have to have the ability to establish those kinds of standards across the province so we can have a consistent response.

Ms Broten: One very quick, last question. We also heard that during SARS one of the barriers of keeping individuals safe and in their homes or under quarantine was the concern they would lose their jobs because there was no job-protected quarantine leave or what have you—I see everyone nodding. If someone just wanted to comment as to whether that was a reality you faced out on the front lines.

Dr Henry: Early on, it was a very difficult problem. Businesses were reluctant to let their people stay home. We wrote a number of very stern letters suggesting to them that the risk to their business if this person became ill in the workplace might outweigh their reluctance to let this person stay home for the period of time we prescribed. I think being able to enact emergency financial assistance to people in a crisis is extremely important, and I don't believe there was the legislative ability to do that at the time.

Ms Broten: Dr Basrur, did you have any comments?

Dr Basrur: My only comment would be that if you have a declared emergency, which is a very rare event, then, yes, there need to be extraordinary provisions put in place because of the sweeping nature of the impacts and the actions or lack of action you may be requiring of large groups of people and large numbers of employers. You can't just rely on everyone's goodwill in the face of financial and other forms of adversity.

In the absence of a declared emergency, I think it becomes somewhat more difficult. On a day-to-day basis, public health can take action to control a communicable disease threat that absolutely has real financial consequences, say for a restaurant that has to close down because a food handler spread salmonella to a number of patrons. That's just the cost of doing business. No one ever says—well, they may say it, but no one compensates them for all the meals they couldn't serve during that period of time. So there needs to be a trigger that would get into government policy that would compensate people at that level.

The Acting Chair: One question on the extension of the quarantine question we've been grappling with in this committee is, we were told there's no way of controlling someone's entry into the province of Ontario if it's a second point of entry. In other words, they've come into Vancouver and are switching. What about this whole issue of quarantine and being able to control the movement of people into the province of Ontario, especially if it's a secondary point of entry?

Dr Basrur: I'll let Bonnie go first, if you don't mind.

Dr Henry: I'll talk a little bit to that. Right now the word "quarantine" and the action of quarantine actually only applies to the powers the federal government has. In legislation in Ontario we have the ability to isolate someone; we don't actually have the ability to quarantine someone. That is just the wording used in the legislation. So we do not have any ability to prevent somebody from travelling from Manitoba to Ontario if there's an issue going on in Manitoba. I think this is something that needs to be dealt with as well at a federal level. There need to be agreements between provinces about how they're going to manage transportation of people across borders.

1150

I think the other thing we need to think about is that we do not have any authority to prevent somebody who has an infectious disease from leaving, either.

The Acting Chair: You mentioned that. We heard during SARS that there were certain people who were restricted and were given isolation orders to stay in their homes.

Dr Henry: There were orders under section 22 of the Health Protection and Promotion Act, which basically required them to do what we said they needed to do to prevent the transmission of a disease.

The Acting Chair: And what if they didn't?

Dr Henry: Then we had the potential to issue an order under section 35 in which we could detain them. We had the ability to go before a judge, but section 35 at the time said they must be detained in a hospital. That has since been changed so that we could, under section 35, require someone to stay in their home. Then we could work with our local police forces to enforce that.

Dr Basrur: Just to give an example of the scale, in the city of Toronto there were some 22,000 or 25,000 people, give or take, who were subject to quarantine in some form or fashion. Less than 30 orders were actually issued. The way I described it, it was voluntary quarantine if you agreed and mandatory if you didn't agree; we'd follow it up with an order.

We used the word "quarantine" because it was widely understood as being—

The Acting Chair: But it technically was not.

Dr Basrur: No. It was an order to isolate yourself or to conduct yourself in such a way as not to expose another person. That would be the legal language under the act.

The related question is border screening. Should we be trying to keep sick people or potentially sick people out and, by extension, should we be trying to keep sick people here so we're not exporting them? It ties in with that WHO travel advisory and so on. They slapped the travel advisory on Ontario because they thought we were exporting cases and then lifted it because we put border screening in against people coming into the country. It did not make a ton of sense. So I think there are a number of things that need to be thought through in terms of the logic: What would make sense in an ideal world? What is realistically practical when you consider the many, many thousands of business, visitor and family travellers across

interprovincial as well as international borders? What is the cost benefit of even trying to put those measures in place relative to the risks, where they're occurring and what other collateral damage you're going to be creating?

Dr Low: Maybe it's time we clarified these terms in the legislation. Isolation is very different from quarantine and if we're using these terms interchangeably, it's not right.

The Acting Chair: Yes, it's the first time I think we've been made aware of the difference in terms and I'm sure the general public—

Dr Basrur: Quarantine is basically taking a healthy person and asking them to stay put. They may have been exposed, not yet sick, still healthy but exposed, and therefore a potential risk to others. Isolation is someone who is already sick. You keep them in a place so they can't expose more people.

The Acting Chair: That's what happened at West Park hospital, for instance. But that's done through federal jurisdiction.

Dr Basrur: West Park was for sick people who needed treatment and Scarborough Grace was closed down. Some of those workers had become ill, they needed a place to be cared for and West Park generously opened up a wing of their hospital and looked after them.

Mrs Sandals: Can we just clarify then? The current legislation allows you to issue an isolation order for someone who is already sick, and previously that would actually involve moving them to an isolation unit in a hospital. It's now been extended so you can isolate a person who is already sick at home?

Dr Henry: No. Can I explain that?

Interjection: Yes, go ahead.

Dr Henry: It's not an isolation order. We can issue an order under section 22 when we have reasonable and probable grounds to believe that somebody may be a carrier or may be infected with an agent of a communicable disease, which means we can direct them to do what we need them to do to prevent them from transmitting that disease. So it's not a blanket isolation order.

Mrs Sandals: So the isolation order could then apply to someone who has been exposed but is not necessarily showing symptoms?

Dr Henry: Exactly, who's not yet ill.

The second level of that is if they don't do what we ask them to do under section 22. So there's a person who's not behaving with quarantine. They're leaving their house, they're having contact with others, and we're very concerned that they were exposed and they might get sick and pass this on to other people. We can apply under section 35 to have them detained for treatment, for example, in a place like West Park.

What the legislation did not allow us to do prior to the change was to have that second level. So somebody disobeyed the order to stay in their home. It specifically said "had to be treated in a hospital" or "had to be isolated in a hospital." The term "quarantine" just doesn't appear in any of our legislative wording in Ontario. There's a Quarantine Act that is a federal act that only

applies—the word only applies to people coming into the country. Does that clarify things a little?

Mrs Sandals: Yes, except what I'm trying to get a handle on is, what's the missing power?

Dr Basrur: you talked about mass quarantine as an issue. I'm sorry, I haven't looked really carefully at your notes. Is it delineated here very clearly what would be a desirable quarantine sort of power from your point of view, or is that something you can give us? Obviously there's a fair bit of confusion around what one can currently do and what, in an ideal world, you would like to be able to do.

Dr Basrur: It's probably worthwhile, in the interest of time, for the three of us to just make sure we're all on the same page insofar as these terms are concerned and their definitions, to state what the power is that currently exists and what would be ideal.

I think Bonnie's example is the best way of showing the dilemma, and that is, if you have a white powder exposure and a whole lot of people covered with stuff, and you don't want them all heading home because they're scared, and some of them go on the subway and some go to the parking lot, you need an ability to detain them, but it's not necessarily an infectious agent that they've got on them. They need to be decontaminated, counselled, their whereabouts identified, and then sent home, with follow-up.

Mrs Sandals: It would be really helpful if you could get on the same page and write that done.

The Acting Chair: Yes. I think that would be very beneficial. I know, given your schedules and so forth—but if you could perhaps collaborate on that, because I know our researcher is also trying to sort this out. If that could be forwarded to the clerk, maybe on some short memo, something you could help sign off on so that we have a better general understanding of this contentious sort of interpretation, that would be helpful to us. Research, as I said, is also looking for this kind of advice.

It's about time for us to recess. Again, on behalf of the committee members and all the members of the Legislature I'd like to thank all of you individually for not only appearing here today—I think you've been absolutely wonderful in the contribution you've made to our deliberations as we grapple with this task, which seems to be more ominous every day—but we have a charge here to come forth with legislation by November 1 and we hope to have your input on an ongoing basis. This will go before the House and then for second reading debate and for more public hearings like this perhaps even after that point. So we have a pretty tight time frame, but we look forward to your input as this develops.

Again, we hope to have somewhat of a focus on the calendar, that it's not going to go on forever. But I would like to thank you for your contributions today and also for the work all of you did for the people of Ontario, whether it be at the West Park hospital or front-line work by Dr Low, Dr Basrur, all the hospitals or Toronto public health. I think it's a real testament to the dedication the

men and women in the health area have, to the leadership you showed above and beyond the call of duty, and making it work as you went along. Like someone said in a brief we read, you sort of had to build the boat in the middle of the ocean, in the middle of the storm. So we're trying to perhaps do something in dry dock here that might help in the future.

I want to thank you on behalf of all the committee for the wonderful work you did that helped so many people to get us through those trying days and weeks. Again, thank you very much for being here today. I know how busy you all are.

We're recessed until 2:30 pm.

The committee recessed from 1159 to 1430.

The Acting Chair: We'll bring the committee on justice policy to order.

We have a couple of announcements to make. First of all there are some pages missing from the shoulder-high stack of binders that you received. This is one of 50,000 pages that was not included; I don't know how they ever found it. Is there another one, Mr Clerk, besides this one? Mr Kormos was looking for this one. He'll be happy to know that it's here. You can add this to the stack.

Last week I think Dr Young was at a conference in Montreal, or he was in Quebec anyway. I've asked for a list of all conferences relating to emergency preparedness to be made available to the members. I've received a list of these conferences—there's a Red Cross conference, for instance, here in October and there are some in other places—just for the information of the committee. Those will be available to you before the end of the afternoon.

Tomorrow the committee will reconvene at 10 am.

LEGAL PANEL

The Acting Chair: This afternoon we have a number of expert panel deputations in regard to the area of legal matters. With us today we have Mary O'Donoghue, manager of legal services, Information and Privacy Commissioner. Welcome, Mary. Thank you for coming. We also have, from the Coalition of Muslim Organizations of Canada, Irfan Syed. Thank you for being here, Mr Syed. We appreciate it. We also have the Criminal Lawyers' Association—they're not here.

We'll allow each presenter to make opening remarks, 10, 15 minutes or so, and I think what we should do is maybe then proceed with the next presenter with the same 10, 15 minutes. Then we'll have questions or comments from the MPPs on the committee. Also, if you want to either ask us questions or ask each other questions, you can. It's pretty open-ended in that regard. As you know, this committee is seized with reviewing Ontario's emergency management statutes. We're doing an overview of those statutes to see whether there are gaps or areas that we can improve upon for potential legislation. Also, we will be writing a report.

Ms Broten: I think it might be helpful, given that I'm not sure the two presentations will be that similar in their focus, if we had an opportunity to ask questions

immediately following the presentation of the first witness.

The Chair: Yes. If you so wish, that's fine.

INFORMATION AND PRIVACY COMMISSIONER

The Chair: We'll begin with Mary O'Donoghue of the Information and Privacy Commissioner's office. You're the manager of the legal services branch. If you could proceed, Mary.

Ms Mary O'Donoghue: Mr Chair, I'm assuming you would like us to address issues of when personal information, including personal health information, can be disclosed, used, shared or collected in emergency situations for the purposes of public health and safety. That's what I thought I would address this afternoon.

I would also like to note that I have some colleagues here this afternoon: John Swaigen, legal counsel; Judith Goldstein, legal counsel; and Colin Bhattacharjee, policy development office. They are more expert even than I am.

I appreciate this opportunity to address the committee.

I'm going to address first the public sector privacy protection act, the Freedom of Information and Protection of Privacy Act and the municipal one, which I will do together, and the new Personal Health Information Protection Act, which will come into force on November 1 of this year.

When I speak about the freedom of information act I'm going to call it FIPPA, because it's just too long. It applies to all provincial ministries and agencies, and then the municipal one applies to municipal bodies such as municipal councils, school boards, fire stations, public libraries, boards of health, district health councils, a wide variety of places, and any number of those may have information that should be shared in the course of an emergency for the protection and the prevention of health disasters, if you like.

I'm going to start with FIPPA, the freedom of information act. Section 11 of that statute requires the head of any public sector institution to disclose personal information where there is a grave public health or safety hazard. It does not require the consent of the person and it doesn't require that there be any kind of request for the information, but they must disclose this.

Section 42 of FIPPA is the one that governs disclosure of personal information by public institutions absent a request. Now, in all situations you can disclose personal information, including personal health information, with the consent of that person, but the consent is not the only circumstance when you can do it. You can also disclose it in compelling circumstances affecting the health or safety of an individual if it's not an unjustified invasion of privacy, taking into account whether access to the information may promote public health or safety. Where there is a request for information, you can also disclose it for research purposes; for instance, if you had an emergency research thing. It's a little more difficult under that

section, 21(1)(e), because there are certain conditions that have to be in place.

If it's collected for a specific purpose—for instance, if you needed to do emergency research and it was collected for that specific purpose—then it can be disclosed for that purpose or for a consistent purpose under section 42. It can also be disclosed where another act requires this, federal or provincial, or an agreement or arrangement under those acts. It talks about an agreement or an arrangement under a statute; that would include an order or anything of that kind. So, as you can see, there are a number of situations where it can be disclosed; also if there is a request for information. Without the consent for the information, there is a public interest override in section 23 which says that almost none of the exemptions that might apply to that information will apply where there is a compelling public interest in disclosure that clearly outweighs the purpose of the exemption from disclosure. So that's another area where you can disclose sensitive personal information. That would not include personal health information, however; it would include personal information where the institution that's holding it is also a health information custodian under the Personal Health Information Protection Act. I'll come back to that.

District health councils would be covered by the same rules that I just mentioned. The medical officer of health would be covered by those rules, and all other provincial institutions that have in their custody or control information that should be disclosed where there is an emergency and it involves public health or safety.

Schools and school boards can disclose, because again they are institutions under the public sector acts, and the Education Act permits disclosure to the Minister of Education and to others prescribed by regulation where it's collected to ensure the safety of pupils. Again, you can see that that might have some emergency application. The Health Protection and Promotion Act says that a school principal must report a student who may have a communicable disease to the medical officer of health.

These are all other statutes that would fall under the freedom-of-information exception which says that you can disclose to comply with another statute. That's why I'm referring to them.

When you deal with health information custodians under the new Personal Health Information Protection Act, most of them are not public sector bodies and they have no barrier to disclosure under FIPPA, the public sector acts, but the new act will apply to them. They can disclose, with the consent of the individual, personal health information to anyone.

1440

Without consent, they can disclose—I'm now talking about private sector health information custodians—to the chief medical officer of health or a medical officer of health for a purpose under the Health Protection and Promotion Act, and that would again be a public health reason. So that would be: "to provide for the organization and delivery of public health programs and services, the

prevention of the spread of disease and the promotion and protection of the health of the people of Ontario." So, again, you can see how this might have application in a health emergency.

They can disclose to a similar authority, to the medical officer of health, under the laws of any Canadian or foreign jurisdiction for a similar purpose—again, for health protection and prevention. And to anyone—so this is, say, your doctor or a hospital—they can disclose personal health information where it's believed necessary to reduce a significant risk of bodily harm to an individual or a group.

Then there are other areas that may not have so much application to an emergency, but they may: to a health care facility to help it determine appropriate health care, and that might include the types of precautions they might take; where it's permitted or required by a law or a treaty; to a researcher—again, they would be under conditions, and I think that might be more difficult to achieve in an emergency situation, but not impossible; to prescribed entities—so they would be set out in regulations; for planning and management of health systems—and there are some conditions there; and, on the request of the Minister of Health, it can be sent to a health data institute for analysis or delivery of health services—again, subject to some conditions.

The Ministry of Health is both an institution under FIPPA and has the section 11 requirements for disclosure of personal information where there is a grave health, safety or environmental hazard, but is also a health information custodian under the Personal Health Information Protection Act, and so then would fall under those rules for those purposes with respect to personal health information.

Ambulance operators are another group of actors who may disclose information without consent. They can share personal information with each other for the purposes of exercising their powers or carrying out their duties under the Ambulance Act. Again, if an ambulance is owned or operated by an institution—say a municipality under MFIPPA—they can make the same sorts of disclosures as other public institutions.

Police departments, under the public sector acts, are also institutions under MFIPPA generally; the OPP under FIPPA. Despite any other act, a chief of police or designate may disclose personal information or personal health information in accordance with regulations for the protection of the public or the enforcement of any federal or provincial act.

I had mentioned that school principals, school boards and the Minister of Education may collect specific personal information and personal health information to ensure the safety of pupils. Again, school boards may collect personal information and personal health information specified by regulation to ensure pupil safety when this is ordered by the Minister of Education.

So you can see, quite a number of situations have been envisaged by these acts.

What I have been talking about is disclosing and using information for specific purposes. When you talk about,

"Can they collect this information for these purposes?", all institutions under FIPPA—and that would include health information custodians that are institutions under FIPPA as well—can collect without consent for any purpose related to their statutory functions. Generally, institutions may collect where it's necessary for a lawfully authorized activity, if it's expressly authorized by statute or for law enforcement. So those are fairly broad permissions for collection.

You can always collect with consent and without consent. I had mentioned that you can collect for a lawfully authorized purpose or with express statutory authority but, where the information can be disclosed by an institution, it can also be collected for that purpose by an institution. Furthermore, if it somehow doesn't fit, if it was collected for a different purpose or disclosed for a different purpose, if it was otherwise, then, directly from the individual, you can collect it with the authorization of the Information and Privacy Commissioner.

So if I get to the Personal Health Information Protection Act, a health information custodian can collect with consent. You can collect it where it's needed for a lawful purpose, or without consent if the medical officer of health, for instance, or a health board is carrying out duties under the Health Protection and Promotion Act. They can collect it without consent, again, for research purposes from people who are not health information custodians. Again, there are statutory conditions and it may be that they are not all applicable in an emergency situation for practical reasons, but that's not to say that it would be impossible. Again, you can collect where it's permitted or required by law or treaty, agreement or arrangement. You can also collect indirectly if that's permitted or required by law.

I had mentioned district health councils and boards of health. They, again, have the same powers that I mentioned with respect to the medical officer of health under FIPPA. As I mentioned earlier, all health information custodians who are private sector have no barriers to collection under FIPPA or MFIPPA, but they would look to the requirements under the Personal Health Information Protection Act.

The medical officer of health may directly or indirectly collect personal information for the purposes of the Health Protection and Promotion Act or to administer a prescribed public health program or service. He may receive reports identifying individuals suspected of having communicable diseases collected from physicians, dentists, nurses, pharmacists, optometrists, drugless practitioners, etc; so anywhere in the health system where they feel that this information may reside that they need for the purposes of carrying out their duties under the Health Protection and Promotion Act.

I've run through these, and I'm hoping it's not too confusing, but I want to give you a sense that some of these issues have been addressed in the statutes. I'm really concentrating on the public sector, FIPPA and MFIPPA, and the Personal Health Information Protection Act, but I wanted to show you these other statutes to

show that, where FIPPA and the health act permit you to collect under the law, these other laws exist to show that the information can be collected, used and disclosed for public health purposes.

I think I'll stop there.

The Acting Chair: OK. Thank you very much. We'll have questions, starting with Ms Broten.

Ms Broten: One of the things we heard when we had our health panel this morning was that a lot of rules with respect to collecting and using information in the regular course are fine, but it is simply not possible during a provincial emergency. This committee is obviously responsible for balancing the interests of the ordinary course and the rules of protection that we have with respect to personal information, and the balance between civil liberties and personal rights versus responsibility on the province to deal with it in the face of a provincial emergency. Some of the recommendations in some other jurisdictions already have this ability to request information from private sources, to basically demand that we need access to this information. I'm wondering if you could give us a snapshot of some of the considerations we should have as we put forward new legislation, and also if you have any knowledge of the examination of these issues when other jurisdictions tackled pretty much the same issue we're faced with today.

1450

Ms O'Donoghue: I would have to say that this is entirely outside of my area of expertise. We administer the act as it comes to us on a day-to-day basis. I would have to tell you that in situations where you're out of the ordinary run of business, it tends not to come to us. So I can't really comment on where there may be shortfalls.

I really wanted to show the committee that there are areas where these things have been addressed and there are ways of getting the information out. I wouldn't be able to point out the gaps that would prevent in a real emergency. Again, I look at the Health Protection and Promotion Act and it permits all sorts of disclosures. You don't need a request, you don't need consent and you don't need a lengthy process, you just do it, particularly where there are other statutes that provide for this. So it hasn't come to us that there are huge gaps there, but you may have heard more than we would in this situation.

Ms Broten: Do you coordinate with other provinces or the federal information and privacy commissioner's office?

Ms O'Donoghue: We certainly consult with them regularly, yes.

Ms Broten: Are you aware of any information and privacy challenges with respect to any of the newer legislation in other provinces or the new federal legislation?

Ms O'Donoghue: They're all new, so they're subject to interpretation. They get interpreted when somebody makes a complaint, and there haven't been that many complaints. This act, the Personal Health Information Protection Act, isn't even in force yet. Often you become aware of the gaps as things go on but it takes some time.

I am aware that there have been situations where people felt that the privacy act would prevent disclosure

where it was needed. There was a case recently in British Columbia, a very tragic case, where a student was seeing a physician or some health care provider who felt that this student was suicidal, but also felt they could not contact the family because they were prevented by the BC privacy act. They did not, and the student did in fact kill herself. It was a really tragic case. But the BC privacy commissioner was able to show that that kind of disclosure was permitted, and we have exactly the same provision in our act for that kind of disclosure. I think sometimes there are misconceptions as to what can be disclosed and what can be disclosed in a hurry.

Ms Broten: One of the challenges, perhaps, that our committee might face is a misunderstanding in the broader community about what is already protected as we put forward clear indications of information that will be attainable by the actor of the state, whoever this person might be. For clarity's sake, it's not necessarily the extension of further disclosure powers. It might just be a clarification of powers that already exist.

Ms O'Donoghue: I think that might be true, and also education. It's not just education of the general public but it's clearly education of actors in the health field. They were under the impression that they couldn't disclose but in fact there was a provision.

Ms Broten: Thank you.

The Acting Chair: Mr Dunlop?

Mr Dunlop: I have no questions.

The Acting Chair: Ms Sandals.

Mrs Sandals: I think I heard you say you can disclose information without consent if it's required for the protection of the individual's health and safety.

Ms O'Donoghue: Yes.

Mrs Sandals: What if the issue is not that person's health and safety but some other person's health and safety?

Ms O'Donoghue: Actually, that can still—let me just find it.

Mrs Sandals: So the information and the person don't necessarily have to be—

Ms O'Donoghue: "Disclosures related to risks"—this is personal health information—"...may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of ... bodily harm to a person or group of persons."

Let me give you an example. Suppose the physician sees somebody and says that this person has a fairly serious communicable disease. This may harm not only their family, but the school the kid has been attending etc. I think this would be covered under the "group of persons." He may disclose this and send all those kids off to see their doctors.

Mrs Sandals: So a communicable disease would sort of come under the definition of "bodily harm."

Ms O'Donoghue: I think so. In other areas of law you hear about somebody who's really crazy and wants to go out and harm people. Again, I think this would probably

fit in. If you felt there was a really serious threat of imminent harm to somebody's family or whatever, who has been threatened by this patient, yes, you could disclose it.

Mrs Sandals: Given the discussion you were having with Ms Broten, and certainly as a non-lawyer—I used to be on a school board, so I've been on the receiving end of this before. Being somewhat familiar with it, I would certainly not have been able to go through the minutiae of when you can and can't disclose. I always took it as, "Don't disclose."

Ms O'Donoghue: Right, and I think this is where we need more education.

Mrs Sandals: So the fallback position is, never disclose. There would have been one person in the organization who figured out the ins and outs—the exceptions to that—but certainly I would have taken it as, "Don't disclose."

Do we have a problem in an emergency situation that the normal operation of all these laws around what you can and can't disclose, and to whom, is sufficiently complicated that in an emergency situation you need some clearer rules about emergencies?

Ms O'Donoghue: I think I'd go back to when we were talking about not just the Personal Health Information Protection Act but the general act that applies to all the public sector—and we'll go back to public sector institutions, including school boards, schools, ministries or whatever. It says that you can disclose in compelling circumstances affecting the health and safety of an individual, and it need not necessarily be the individual whose personal information—it says "an individual." Then you'd have to do a notification afterwards, but it doesn't say you must hold a hearing. There aren't pre-steps that would stop you from taking immediate, although you would like it to be considered, action.

Mrs Sandals: So your sense is that, at least within health emergency situations, the authority is there to disclose. I'm trying to think of an example, but I'm trying to think of some other sort of emergency where there might be a requirement for the disclosure of some other sort of information, because personal information isn't always health-related.

Ms O'Donoghue: That's right. If you look again at section 11 of FIPPA, it permits you to disclose, for instance, if "the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety..."—so health is only one of the issues, but public safety can be one, or an environmental thing.

Mrs Sandals: So safety would get into perhaps—which maybe leads us to another question: the rules of courts and such things. At any rate, just generic safety is within the—

Ms O'Donoghue: It's not qualified. It doesn't say a particular kind of safety. It just says that the public interest requires it, and it's a grave threat to safety. So it's not something minor.

1500

Mrs Sandals: Something which is perhaps right out of your field because it's not FIPPA or MFIPPA, but one of

the things that has been suggested to us is around hazardous materials and that sort of thing, where the information required to deal with a potential emergency situation is in the hands of a private corporation because they own the hazardous materials. Is there anything that requires that disclosure, or does that fall under your purview at all?

Ms O'Donoghue: The only place I can think of that it would fall under is, again, section 11, where it requires the minister to disclose information where there is a grave environmental hazard. But it would require the minister to have custody or control over that information in the first place. None of these acts would address your going and getting the information from that company.

Mrs Sandals: So the hole in all of this, then, may not be so much the disclosure of the information, if it's either resident within the health sector or resident within a public body. The issue may be around the authority to collect the information in the first place.

Ms O'Donoghue: I don't think it's really a collection issue, in the sense that under our act you can collect it for a lawfully authorized purpose or where you're expressly permitted by law. You'd be in more of a seizure situation, and I think that would be somewhere else.

Mrs Sandals: OK. So maybe what we need to sort out is the seizure of the information in emergency circumstances, which may be where we at least need to crack down.

Ms O'Donoghue: There may be powers somewhere else that I don't know about.

Mrs Sandals: But the disclosure is there. It's whether or not we have access to the information in an emergency situation in the first place.

Ms O'Donoghue: Right.

The Acting Chair: There were a couple of issues raised by our deputants. One was by EMS Toronto. They raised the issue of an emergency services person, an ambulance driver, taking a SARS patient from one hospital to another, which they did, and never being told that person had SARS. They felt they should have the right to know that information and they should have been informed that they were carrying a person with an infectious disease, yet they were not given that information. As you know, jail guards, for instance, who transfer people from the Don Jail to the west detention centre, are not told they could be transferring an HIV-positive inmate. I know in that case they can't get that information.

Ms O'Donoghue: I've been referred to section 76 of the Personal Health Information Protection Act—I'm looking at the wrong one; bear with me for a moment. Oh yes, subsection 19(2) of the Ambulance Act: "The persons named in the following paragraphs may disclose to each other personal health information about an individual without ... consent where the disclosure is reasonably necessary for purposes relating to the discharge or exercise by the recipient of ... information of their duties or powers under ... the regulations," and then you have the minister and an operator, presumably of the

ambulance service, the minister and a medical director, the minister and one of an upper-tier municipality and a delivery agent, and these are sort of sharing. So it has actually been addressed in this personal health information act.

The Acting Chair: But I'm saying that in real life, no one has the obligation to tell that front-line health provider in an emergency that he or she could be in danger.

Ms O'Donoghue: This act does not impose requirements to disclose on patients. It doesn't. That's not really what it's there to do. But the medical officer of health may collect information about communicable diseases etc.

Interjection.

Ms O'Donoghue: Yes, an ambulance person can disclose, but I think what Mr Colle is talking about is, is there an obligation on the patient to disclose to the ambulance person?

The Acting Chair: The patient or the hospital that discharged the person or the organization that's moving a patient from hospital A to hospital B.

Ms O'Donoghue: Yes, a hospital may disclose that to the ambulance driver under section 40.

The Acting Chair: But it seems the hospitals we had here today are wondering whether they have the right to disclose private information to a second party.

Ms O'Donoghue: This is for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. You can imagine that ambulance drivers would fall under that, because they would be at risk if they weren't taking the precautions that you would take with somebody with SARS.

The Acting Chair: Exactly.

Ms O'Donoghue: It says "may disclose"; it doesn't say "must."

The Acting Chair: This is where I guess they feel that they are vulnerable, especially in an infectious disease situation. There doesn't seem to be a protocol that they feel comfortable with, and they could be spreading the disease, in fact, because they haven't been made aware of the fact that the patient they're transporting is carrying a transmittable disease.

Ms O'Donoghue: Well, part of the problem has been addressed.

The Acting Chair: I'm just saying, what if we put in legislation that an emergency front-line person had the right to ask for and to receive that information of whether or not they were vulnerable in that they were transporting someone with a transmittable disease?

Ms O'Donoghue: It seems to me that a hospital, for its own risk analysis and risk protection, should put something in place that deals with the consideration of when you disclose and to whom. These things are foreseeable.

The Acting Chair: The hospital is saying they can't do that.

Ms O'Donoghue: In fact, section 40 does permit them to make disclosure for eliminating risk.

The Acting Chair: Those are the things we'll have to iron out, but we'll certainly pass that on to the hospitals and the EMS presenters.

We also had an indication from Dr Basrur and Dr Low that one of the concerns they had after their SARS experience was their ability to gather and acquire information from hospitals. They feel there was a real barrier, and there is a barrier, to them acquiring data on patients who have been in hospital. For example, in the situation with SARS, they had a real difficulty acquiring information.

Ms O'Donoghue: Yes. Again, people are beginning to work with this act, and I think it makes it quite clear that you can and it does permit disclosure by hospitals. So I don't think hospitals will be able to say any more, "We're not able to give you that." In fact, what this does is it clarifies a lot of those rules that were perhaps a little more inchoate before.

The Acting Chair: It would be interesting to have you here at the same time as Dr Basrur and Dr Low—

Ms O'Donoghue: Oh, please not.

The Acting Chair: —just to try and figure this out. We're here as laypeople trying to understand this very complex area. But I can understand that. Anyway, those were some of the issues raised before us.

Ms O'Donoghue: I think they're good issues.

The Acting Chair: OK. Thank you for that attempt at clarification.

Next is Mr Zimmer.

Mr Zimmer: It seems to me one of the problems with confronting emergencies and the whole question of privacy information and indeed the whole privacy legislation and various other non-emergency activities of governments and agencies is that there is a plethora of privacy protocols for hospitals, school boards, police departments, legislative bodies. They're all over the place and these bodies have their own interpretations and their own protocols.

When an emergency arises, or even something short of an emergency when one is trying to get a piece of information, you find that you run into these various local protocols or interpretations of privacy legislation by hospitals, school boards, police, all manner of institutions—the forestry people—and nobody seems to be able to get a quick response. One of the responses you get is a generic response: "I think there may be privacy concerns here." You hear these magic words, "there may," "I think," and the bell goes off that there may be privacy concerns. Then everybody runs for cover and often it's days or weeks, or sometimes you never do get it sorted out.

1510

So my question to you is, particularly in the context of a crisis situation, what recommendations or what thoughts would you have where we could bring some clarity or order or simplicity to this whole issue of dealing with the response from somebody, "Well, I think there may a privacy concern here," when you've got to move quickly on the issue?

Ms O'Donoghue: I'm going to first address real emergency situations where there is a serious risk to a number of people. I think these situations are foreseeable, and therefore the protocols ought to be put in place long before there's an emergency. That requires looking at the statute and looking at what is permitted, and under what circumstances, and making sure that your front-line people are trained and kept up to date on that. That would be my first recommendation, because, again, I don't see that you have to go beyond this statute to find the answer.

In terms of situations that are not so much an emergency, it does require that there be a compelling interest in the disclosure. There are privacy issues, and that's why this statute was written. It wasn't just written to codify disclosures; it was written in contemplation of the privacy of patients. I hear your issue about different people having different interpretations, but at least you'll be able to get some kind of answer if the big institutions like the hospitals, especially, have sat down and done the planning and got their protocols in place for foreseeable situations.

Mr Zimmer: I take your point when you say the answer to whether there's a privacy concern is ultimately in the legislation, but the difficulty is that in an emergency, or just in any situation with a very tight time frame, when someone raises that there may be privacy concerns, it's a very spooky concept, and things just grind to a halt. I think we've got to figure out some way—

Ms O'Donoghue: That's why I'm saying that you've got to do this long before there's an emergency. As I say, these are foreseeable situations. You really have to have this stuff in place and your front-line staff trained as to the fact that, "Yes, you can respond in an emergency, and this is how."

Mr Zimmer: Is it your sense that in fact that sort of clarity or training or awareness is lacking right now?

Ms O'Donoghue: I really couldn't answer that. I know that lots of work is being done, and I do know that various actors in the health sector have operated under their own protocols. But this really is now a code which didn't exist before.

Mr Zimmer: My last question, and this may be a bit unfair: Is it your view that in an emergency situation the need for information should trump privacy concerns?

Ms O'Donoghue: Sometimes it does in the statute.

Mr Zimmer: And is it your view that, other than sometimes, as a matter of principle an emergency threat or concern should in all cases trump a privacy concern?

Ms O'Donoghue: It depends on the emergency, I'd have to say, in my lawyerly fashion.

Mr Zimmer: Well, an emergency that was threatening life, limb, or the public health.

Ms O'Donoghue: If it's life or limb—this talks about a "compelling" interest. Not all emergencies are compelling, because in fact they may be an emergency for 10 minutes and then dissipate.

Mr Zimmer: Perhaps what we need is a definition of when an emergency is such that it would trump a privacy concern.

Ms O'Donoghue: Again, I would refer you back to the statute and to the wording of what is "compelling."

Mr Zimmer: Thank you, Mr Chair.

The Acting Chair: Just one question, and then to Ms Broten. You mentioned that now people have this code. Are you talking about the legislation?

Ms O'Donoghue: I'm talking about the legislation, yes.

The Acting Chair: And when was that brought about?

Ms O'Donoghue: It was introduced on December 17, 2003, and it will take effect on November 1, 2004. So people are preparing for it now.

The Acting Chair: OK, thanks. Those dates are very helpful.

Ms Broten: I just have a question with respect to the non-health sector, if we could look at that for a minute. Certainly you've clarified for us the difference with respect to information that is in the possession of a government body or agency, as opposed to going out and demanding it. But, for example, if an arm of government had information with respect to some kind of product we would need to potentially ration—diesel fuel, as an example—and through consumer and business affairs or some arm we knew what companies had so much fuel and we wanted one arm of the government to say to the other, "Disclose that information to us because we are going to put in place a rationing scheme of how this is going to operate," would one arm be caught by FIPPA in response to the other?

Ms O'Donoghue: First of all, government institutions can disclose information; we're not talking about personal information. FIPPA and MFIPPA don't place barriers to disclosure from one ministry to another. That's the first thing. If it were held outside of government, these statutes don't address the compulsion of the production of information to government. That would fall under other statutes.

Ms Broten: What about one level of government to another, federal to provincial?

Ms O'Donoghue: Federal to provincial, there are arrangements there. Again, section 42 permits disclosure, for instance, to other law enforcement agencies in Canada and it permits disclosure for the purposes of complying with another statute. It could be a statute of the Parliament rather than a statute of this Legislature here. You can also do it under treaties or under arrangements under those statutes.

Ms Broten: What about commercially sensitive information, business information that is not personal but would be viewed as being commercially sensitive to the business operator?

Ms O'Donoghue: Again, if it related to a public health, safety or environmental risk and the public interest required the disclosure of that information, then I refer you back to section 11. It doesn't have to be personal information. It can be disclosed. The public interest would trump.

The Acting Chair: Thank you very much, Ms O'Donoghue, for an excellent presentation and helpful

interpretation of some of these new statutes and how they impact on emergency management. It's a very complex area, we're finding, and we appreciate your help in guiding us through that.

Ms O'Donoghue: Thank you for inviting us.

COALITION OF MUSLIM ORGANIZATIONS OF CANADA

The Acting Chair: Next, from the Coalition of Muslim Organizations of Canada, is Irfan Syed. Mr Syed, you would like to begin with a presentation, and then we can ask questions. You can begin right now. Thank you for waiting.

Mr Irfan Syed: Thank you, Mr Chair. Good afternoon, ladies and gentlemen. Just a brief background: My name is Irfan Syed. I'm actually the current chair of the Muslim lawyers' association and we're a member of the coalition of Muslim organizations. Because our expertise happens to be the legal area, we often get called on to speak on behalf of the organization on legislative matters.

The coalition is an umbrella organization consisting of most of the major Muslim organizations in the greater Toronto area. We have participated primarily at the federal legislative hearings, most notably the House and Senate committee hearings on Bill C-36 and Bill C-17, the short titles being the Anti-terrorism Act and the Public Safety Act.

I'm just going to mention two perspectives for us. In emergency situations in general, like all Canadians and Ontarians, our community wants to make sure there are plans and procedures in place to prevent, mitigate and respond to emergencies effectively. As a result, of course, we want to make sure that municipalities and government agencies are prepared, that they do respond effectively and that there is good oversight, at both the preparation level and the implementation or response level.

1520

Speaking more from our particular community perspective, there could conceivably be certain types of emergency situations that arise which may have a differential impact, especially in terms of the post-emergency situation or the fallout or backlash. In this regard, of course, we refer to the environment after 9/11. Some of that environment entailed suspicion, profiling, and discrimination, almost all of which was unwarranted.

Because of the short timeframe that we had of notice of this hearing, we haven't prepared detailed submissions for you, but I would like to draw to your attention that our interest is that some focus be given to the oversight mechanisms in place to prevent unintended, or perhaps even intended, consequences that would be unjust, if not an abuse of power.

The reason I weigh some of this is because, among our experiences—and I dealt personally with investigative agencies, RCMP and CSIS investigators, as well as discussions with politicians and judges. Perhaps as individuals or as a group, but just based on their experiences and

their particular training, they may have certain preconceptions or notions that may lead them to make inaccurate judgments, not with a bad animus or evil intent, but just that they don't know how to do certain types of assessment, especially in terms of risk. Because of errors in that risk assessment, vulnerable members of the Muslim community could be unfairly targeted and affected.

What would we be interested in saying or where can we participate? In the Emergency Management Act, I look at section 2.1(3), where we look at the hazard and risk assessment itself, and infrastructure identification. Similar to the risk management that's conducted by other levels of government and agencies, there should be an opportunity for public participation, to say, "OK, you may have done your own internal assessment but here's what we think are probably hazards and risks." At the same time, we should bring to your attention what are not hazards and risks so that the screening mechanism you're using is not overly broad.

Another area related to this is the following subsection, subsection (4), where I guess if an assessment has been made, perhaps an emergency program established and a plan, both the preparation and response, it may be based on certain information. Our concern is that some of that information may not be made public. So it may be difficult to evaluate both the aspects of the plan or program that are made public and aspects that may not be made public. The concern here, of course, is that information that's perhaps provided, especially by foreign governments or their intelligence or defence agencies—or perhaps even Canadian agencies that have collected information and, again, have been subject to certain biases in perspective that could impact the way emergency plans are implemented.

We can get into what kind of specific scenarios I might have in mind a little later on, perhaps in the questions, but again, as I said, the concern arises that in our more recent experiences in the last few years with RCMP, CSIS, politicians and judges, based on the questions they ask, we really don't think they have a good understanding of the Muslim community. Related to that, of course, is the opposition the Muslim community faces every time a new mosque is going to be built, and if we ever have to go to municipal hearings for rezoning. You hear the comments from the public, and it's quite alarming and shocking. There's no reason not to believe the same viewpoints are not held by people in government, law enforcement and other agencies.

Where we have certain points of control to prevent unintended consequences or possible abuses, I noticed that, at least in this particular statute, the Solicitor General is responsible for the administration of the act. Without disparaging anybody, the federal Solicitor General position has been filled by people in the past who have not inspired a lot of confidence either.

The other person is the chief of emergency management for Ontario. Again, what are the qualifications for that job? Is it going to be a political appointment? What

kind of training will they have? What will they be required to become apprised of?

Related to this, of course, are the provisions of section 11, where we talk about the protection from personal liability "instituted against a member of council, an employee of a municipality, a minister ... for doing any act or neglecting to do any act in good faith." This again is where our concern is. It may very well be that individuals may act in good faith but because of their particular experience, their background or the information they have, they may act in a way that, in hindsight, may be found to be inappropriate. What are we going to do proactively to make sure that these individuals involved in both oversight and implementation are sufficiently informed of the matters that they should be? For lack of a good analogy, we talk about diversity or sensitivity training that takes place in many agencies. Is that something that should be called for here? Perhaps.

Those are my introductory remarks. I hope we can take the discussion further with the questions.

The Acting Chair: Mr Syed, if you wish to forward on to us more information when you have more time, feel free to do so. We would welcome that.

Mr Syed: I will see if we can manage that. In fact, many of the concerns are similar to our submissions under the Public Safety Act. This is under the authority of the Minister of Transport where they can make emergency measures dealing with, for example, airports. Part of the concern we had there is that some of the emergency measures that could be implemented don't have to be disclosed to the public, so there could be mechanisms or measures that are being put in place and the public doesn't know what's happening. So if individuals are affected—for example, they're subjected to additional screening or prevented from boarding—you don't know what criteria that's been based on.

Similarly, the concern is that under these types of emergency statutes in Ontario, might there be provisions where something is implemented—it could be something as simple as saying, "People of Arab or Muslim descent are prevented from approaching any municipal infrastructure facilities"—and that type of order or provision may not be made public?

The Acting Chair: That's why I think you made an important point. One of the things we're doing as a committee is looking for oversight mechanisms to ensure that there is accountability and transparency that can safeguard people's civil rights. I think the key is to try to come up with the kind of oversight mechanism that will enable the emergency front-line workers to protect the public interest, but at the same time, in their protection of the public interest, there is still accountability to the public, and ensuring that they're not overstepping their bounds in terms of civil liberties or charter rights. We're also grappling with that. Certainly down the road, we'd like to get more input from people like you about these mechanisms, which I think are important.

Mr Syed: We look forward to it.

The Acting Chair: Questions?

1530

Ms Broten: I was wondering whether you or your organization are a member of the multicultural panel the federal government has put in place as part of the community safety arm of government that they've established.

Mr Syed: I think you're referring to the multicultural round table that's part of the national security policy. This is just now being implemented, and I think they're taking recommendations on who would participate in the round table. We do want to participate, but it should be meaningful participation. In fact, COMO was invited to meet with Minister Anne McLellan a week before the announcement of a national security policy. It was sort of just a quick dinner—"We're here; we're interested in hearing your thoughts"—no notice that the policy was going to be announced the following week. There was serious disappointment in that, because the communities to some extent felt they were used. They were brought in the week before for a photo op, the announcement that consultations occurred and a week later the policy was announced. For people who observe these things more carefully, we don't have confidence that the round table is going to be a meaningful participation.

Ms Broten: OK. That's helpful to know.

One of the things we're looking at is the whole implementation of checks and balances, and I think it's important to remember that what we are talking about would be a provincial emergency—an extraordinary occurrence in the province, not an everyday type of occurrence. But certainly there are issues, and I raised these with Dr Young, as to the delegated authority you would see. Whether the orders would be made by the Premier or Dr Young or whomever that might be, they are not the actors on the ground enforcing all those mechanisms. How do we establish sufficient checks and balances, accountability etc., as the Chair has said?

One of the mechanisms that some other pieces of legislation have are 15-, 30- or 45-day callbacks on various orders or directives that have been made and a calling to account to the Legislature. You're nodding, so I think you're familiar with that type of accountability mechanism. Is that something that meets with the desires you've put forward, or are you thinking of a type of accountability separate from the political body and the government itself?

Mr Syed: I would suggest both. Again, the Public Safety Act contains that, where emergency measures are implemented and there is a review period. I can't remember the exact time frames. I think they vary from a minimum of 14 days to 45 days, subject to review. But again, that's not subject to public disclosure, so there may be a review in council at the cabinet level. That's one aspect of it. Of course, when measures have been implemented for a certain period of time, especially for a lengthy period of time—30 days—damage could be done to individual civil rights, some of which could be irreparable.

What I'm suggesting is, yes, have that mechanism, but also have the mechanisms in place beforehand so that as

the measures are being planned and implemented, there could be somebody to provide sober second thought and say: "Wait a minute. Is this really achieving our objectives, or is it overly broad?"

There are two aspects to it. If emergency measures are implemented and it's publicly known what the measures are, especially if they restrict individual civil liberties, then it's possible that those could be subject to judicial review. But if those measures are not made public and you just have a suspicion—and then of course the anecdotal stories have to pile up before you see a pattern—by that time it might be too late. That's where my concern is: timing.

Going back to the experience after 9/11, a number of allegations were made against individual Canadians, both within Canada and outside of Canada. Their reputations were damaged and their businesses basically shut down. While they were exonerated months later, they were never able to go back and regain their lives or their livelihood the way they were before.

Ms Broten: OK, just one last question. Certainly taking guidance from you with respect to perhaps the federal government not having established things in a perfect manner, are there other jurisdictions that have done a better job as they struggle with many of the same issues, worldwide and certainly in North America? Are there any jurisdictions you can think of which have established a model that has the appropriate checks and balances in place that we might look to?

Mr Syed: Probably not. In fact, with our review of Bill C-36 and Bill C-17, the jurisdictions we did look at were the United States, the British model, and I think to some extent the Australian model. While the British model had some things in it that I think we had reference on—they don't come immediately to mind—the Canadian model was the best at that time.

The deficiencies lie at the participation level. Some of it is the fault of the community itself, because it is a relatively new community and perhaps hasn't participated at certain levels as it should. But up until recently, there were no politicians from our community, very few involved in the law enforcement area and intelligence and security. So some of it is up to the communities themselves to participate more. In fact, as I said, this organization was formed very soon after 9/11 and decided, "Look, we have to have a voice and a viewpoint, so we have to participate."

But in other areas it takes some time. There are no Muslim judges in Canada at the federal or provincial level, so when a federal judge is evaluating secret evidence provided primarily from foreign jurisdictions, what type of briefings are they going to be looking at, especially when that material can't be disclosed to the defendant's lawyers? I think, similarly, what I'm suggesting and what we've suggested in other venues and forums at the federal level is, for example, that when there is sensitive information that you think might affect a particular community, perhaps you should have representation from that community, individuals who may

have the proper security clearance to review that information and provide their input. I think that would go a great way in preventing problems later.

I'll cite an example. I was fortunate to meet with a forum of judges about a month ago on a different matter, and they were thinking of a certain issue that concerned them all. They were looking at a means to address it. They were looking at inviting representatives to speak to them about it, and among the group they wanted to invite were representatives from the Muslim community. They suggested some names whom they thought were representatives or perhaps leaders of the community. What was shocking to me and what I explained to them afterward was that the people they thought were representative were in fact not representative; they were far outside the mainstream. In fact, if those people had been invited and had given representations, that whole event, in the Muslim community's eyes, would have been undermined; it wouldn't have been considered legitimate. So that's an example.

On the one hand, the communities have to participate and say, "Look, we're here," say who we are, what we believe, what we do. On the other side, government or agencies have to be informed: What is the community makeup? Who does what? What do they believe? What is their position on something, what's their stand?

This ties in to the risk assessment. Let's face it: Allegations are out there saying that if you fit this particular profile, you're the one we have to look out for; you're the risk. Is that true? If you're only hearing from one side, probably. That's going to affect your decision-making.

Ms Broten: We certainly appreciate your taking the time to come and talk to us at this very early stage of our process as we are looking at what type of legislation we would want to draft. It's an issue that we're very cognizant of in terms of balancing the powers we may seek on behalf of the government in the context of an emergency and civil liberties.

1540

We invited a number of groups to come and make representations to us today: the law society, the Criminal Lawyers' Association, the Canadian Association of Black Lawyers, the legal clinics, the Canadian Arab Federation, ARCH, the civil liberties association and the Ontario Bar Association. We haven't had a large take-up to come before us at this time when we're very early on in the process. Perhaps most groups are used to coming in and making deputations after there is a piece of legislation out in consultation. But we really wanted the groups to come forward and speak to us at an early stage so we could get some advice and some thoughts and things to think about as we are moving through this process. So thank you very much.

Mr Syed: You're welcome. I think you're aware that the CBA conference in Winnipeg just wrapped up, so a number of people are just flying back today; I think the earlier presenter just arrived too.

Mrs Sandals: Just briefly, I want to make sure I'm understanding where your major concern would be. If

we're talking about emergency powers, and this is very definitely in the case where a provincial emergency has been declared and we're looking at things that would be very public orders—evacuation, quarantine, rationing, those sorts of things—those are things that are quite public by their nature and which apply to the general public. Those are things where you would not react any differently than anybody else reacting to that sort of situation. Where you would want us to be particularly sensitive is in the case where something has an effect that may not be entirely public. In some sort of emergency power which is not necessarily terribly public or which may have some differential application, that is where you would want us to be particularly careful about checks and balances?

Mr Syed: Absolutely, and in addition, even with the public orders, the mechanisms that are available—for example, judicial review or internal review—to set short time frames. I'm assuming that in an emergency, an oversight committee can meet fairly quickly, if they're not too widely dispersed. So is it something you should consider, that once the emergency is enacted, the committee meets to review the orders within 48 hours? Or should it be a week? I think that has to be part of it before the public gets involved.

If I can give an interesting example, because it happened today, I was in fact at a client's earlier today, and this particular client is a charity. Most of its funds and operations are overseas. It has been subject to a CCRA review, which raised some concerns that I'm helping them address.

Interestingly enough, while I was there, they received a second visit from the OPP. It was curious, because they were from a particular investigative branch and they didn't come to ask any questions. They just came to introduce themselves, for the second time. Curious. But it became obvious that they were there basically to tell them, "Look, we're here keeping an eye on you."

How do I get to the bottom of that? It seems to be it implied intimidation or a threat, because in fact we saw that before. We talk about Bill C-36 and its oversight mechanisms. The Solicitor General is required to provide an annual report to Parliament on the use of certain special provisions: investigative hearings and preventive detentions. The Solicitor General was able to come back in previous years to say, "We haven't used these powers." OK, that's interesting, but for people who have heard the anecdotes on the ground, you'll find out that CSIS and RCMP investigators have always threatened to use these powers if people didn't co-operate. So in the Solicitor General's reports there is never any mention of how many investigations were done, how many investigations resulted in nothing being found for further investigation, how many times the powers were ever threatened to be used. I think that's often an aspect of it that goes under-reported, if at all, and is hidden because it is a stick. Similarly, it's possible that it could be there in provincial legislation as well.

Mrs Sandals: Thank you.

The Acting Chair: If I could just comment: You mentioned the fact that no matter what the laws are or who is making the laws, if there isn't a good cross-section of representation from all communities, laws are always possibly going to have gaps in them. That's one of the points you made. It's interesting that two people I know with strong ties to your community who were elected federally—Wajid Khan and Yasmin Ratansi—hopefully will be helpful as they go through their on-going processes in Ottawa.

I think I speak on behalf of all of the committee. As Ms Broten said, we are trying to reach out to as many people and organizations as possible very early on because we have not predetermined our checks or balances. We're trying to find the best way of essentially protecting people in case of a flood, a blackout, an infectious disease or whatever it may be. That's our intention and goal. In achieving that goal, we don't want to infringe on anybody's civil liberties, rights or traditions. That's why we want to make sure we cover those bases before we go ahead, because we don't want that to detract from the front-line people protecting all members of the public. That's why very early on we're reaching out to all organizations and individuals in saying, how can we best ensure that those are safeguarded as we proceed toward our objective of protecting the public in case of a disaster or some kind of emergency situation?

That's our intent and that's why, as I said, we're more than open to advice and concerns that are brought forward early. We certainly will weigh those very heavily because, again, in trying to achieve one good, we don't want to infringe on hard-gained rights of all Ontarians. I think that's our objective.

Mr Syed: I very much appreciate that. The committee is probably already aware that in the emergency types of statutes and situations where there is a lot of inter-governmental co-operation—or at least we expect it to be more so in the future than in the past—the oversight gets blurred as to who is watching whom doing what.

It ties in to some extent with the federal legislation, Bill C-36, where it refers to the powers of peace officers. What's happening now, post-9/11, is that there are

mostly RCMP and CSIS officers who are on the ground. Because their numbers are fewer and they're not as integrated in local municipalities, they are training more either OPP or local police officers. So the issue is, where is the oversight? Are they taking direction locally? Is it being cleared locally for the investigations or is it being directed internally, within those agencies?

It might not be directly within the purview of this committee but it's something to consider: In an emergency, who is going to be taking charge of what? Will the federal and provincial governments be working together or will you be taking your directions from the federal government? Whose statutes or emergency plans will take precedence?

The Acting Chair: That has been raised many times before this committee. It's a very real question and that's what we're trying to grapple with. That type of jurisdictional greyness really hinders protecting the public interests in both ways.

On behalf of the committee, thank you very much for taking time to be with us. As MPP Broten said, we've had difficulty getting people who are associated with legal activities or the legal profession to appear. There will be more time in the future to consult and get other organizations and groups to come before us.

Again, feel free to forward any other information. As this proceeds in our report writing and our legislative writing stage, we'd be more than happy to get your valued input. Thank you for taking time.

Mr Syed: You're welcome.

Ms Broten: I was wondering, before we adjourn today, Chair, if we could just go through the schedule for the next couple of days and perhaps into next week, if there were additional groups to be invited or suggestions that members wanted to make in the week to come.

The Acting Chair: Sure. I guess we can adjourn for now. Then, if you want to stay around, we'll look over the schedule for the next week or so.

The committee stands adjourned until 10 am tomorrow, same room.

The committee adjourned at 1556.

CONTENTS

Wednesday 18 August 2004

Emergency Management Statutes Review: Health Panel	JP-137
Dr Sheela Basrur	JP-137
Ms Allison Stuart.....	JP-143
Dr Donald Low	JP-145
Ontario Hospital Association	JP-146
Ms Janet Beed	
Mr Barry Monaghan	
City of Toronto public health emergency services unit	JP-148
Dr Bonnie Henry	
Information and Privacy Commissioner	JP-161
Ms Mary O'Donoghue	
Coalition of Muslim Organizations of Canada.....	JP-167
Mr Irfan Syed	

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Mr Mike Colle (Eglinton-Lawrence L)

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Thursday 19 August 2004

Journal des débats (Hansard)

Jeudi 19 août 2004

**Standing committee on
justice policy**

Emergency Management
Statutes Review

**Comité permanent
de la justice**

Examen des lois ontariennes
sur les mesures d'urgence



Chair: David Oraziotti
Clerk: Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 19 August 2004

Jeudi 19 août 2004

The committee met at 1003 in room 228.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr Katch Koch): Good morning, honourable members. It is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Ms Laurel C. Broten (Etobicoke-Lakeshore): I'd like to nominate Mr Arthurs.

The Clerk of the Committee: Are there further nominations?

Mr Peter Kormos (Niagara Centre): Perhaps we could suspend this for five minutes and we could find Mr Orazietti, who is paid to be the Chair of this committee, and who, gosh, has been a no-show for the weeks and weeks that the committee has been sitting. Is Mr Orazietti around, and if not Mr Orazietti, perhaps the Vice-Chair, Mr Delaney? Then we wouldn't have to elect Acting Chairs. He hasn't been around either. Having said that, I want to nominate Liz Sandals.

Mrs Liz Sandals (Guelph-Wellington): I would decline, but I would actually like to nominate Mr Arthurs to chair the committee.

Mr Kormos: He has already been nominated.

Mrs Sandals: Sorry, I wasn't paying attention.

Mr Kormos: I want to nominate Tim Hudak. He's a member of the committee.

The Clerk of the Committee: He's a member of the committee, but Mr Hudak is not here to accept the nomination.

Mr Kormos: I understand that. I nominate Laurel Broten.

Ms Broten: I very much appreciate your nomination, Mr Kormos, but I've made my selection in Mr Arthurs.

Mr Kormos: I trust Ms Broten was declining by saying that.

I want this to have the appearance of fairness. Acclamations are never good for democracy. Look what happened with the Speaker selection, right? I want to nominate Jim Brownell, who shouldn't have smiled at my Speaker comment.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Mr Clerk, I decline. I certainly support Mr Arthurs.

The Clerk of the Committee: Further nominations?

Mr Kormos: I want to nominate Shafiq Qadri, a very capable person.

Mr Shafiq Qadri (Etobicoke North): I thank you for your esteem and your confidence, Mr Kormos. I respectfully decline.

Mr Kormos: In the interests of democracy and simply to encourage people to vote, I want to nominate David Zimmer. There has to be choice. Yesterday the Minister of Labour was talking about choices for old folks. He was basically saying senior citizens should get off their lazy butts and get back to work at the age of 75. That was the kind of choice the Minister of Labour wanted to give senior citizens. So I want people here to have choices, Liberal choices. David Zimmer, nominated.

Mr David Zimmer (Willowdale): Thank you for your vote of confidence, but I respectfully decline.

The Clerk of the Committee: There being no further nominations, I declare the nominations closed and Mr Arthurs elected as Acting Chair of the committee.

Mr Kormos: Chair, I want to congratulate you on your acclamation to the position of Chair. You clearly have the confidence and trust of your colleagues, and I say this committee will be well served by your skills, your patience and your skilful, talented demeanour. If anything, I'm confident you'll be an even better Chair than the Chair we've enjoyed over the course of the last few weeks, and I'm sure you agree.

The Acting Chair (Mr Wayne Arthurs): It's one of the easiest elections I've ever had to run, and I thank you for that.

EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair: We'll call to order the standing committee on justice policy. Just a reminder that our function is the review of emergency management statutes, with an eye either to introducing new or amended legislation if it's so deemed required by the committee at the end of their work.

MINISTRY OF THE ATTORNEY GENERAL

The Acting Chair: Our schedule this morning has the Ministry of the Attorney General, John Twohig, senior counsel, I believe, and Graham Boswell is here as well. I understand the presentation for the committee this

morning will be 15 to 20 minutes or thereabouts, as the case may be. We have time available. We know it's fairly detailed. Then we will move to each of the caucuses in rotation for questions. This is a little different than we were yesterday. Since our panel discussions are over, we're back to the more formal structure of the standing committee.

Again, if you would introduce yourself for the purposes of Hansard. As you know, this is all being recorded verbatim for that purpose.

Mr John Twohig: My name is John Twohig from the policy branch of the Ministry of the Attorney General.

Mr Graham Boswell: I'm Graham Boswell from policy branch, Ministry of the Attorney General.

The Acting Chair: Good. Start at your leisure.

Mr Twohig: Thank you, Mr Chair. I will try to keep my comments brief, and they will come in essentially two parts. I want to give you an overview of some of the work that has been done at the Ministry of the Attorney General, that I'm aware of, in the past six or seven months. In the second part of the presentation, I want to distribute material to you. The central piece of material I want to give to you is a piece of draft legislation that we worked on, the so-called contingent legislation should an emergency occur—fortunately it did not occur—during the winter of 2004.

As you probably know from your deliberations thus far, the Ministry of the Attorney General has no primary responsibility for emergency management or planning for operational issues in the event of an emergency. However, Attorney General lawyers did provide some assistance and advice—I'm not aware of the exact nature of the advice—to those working on the front lines during the SARS crisis of 2003 and during the blackout in August of 2003.

1010

I became involved in this file on approximately November 18, when a colleague of mine left our office to take another position. At that point, certainly among government officials—government employees of the two primary ministries, the Ministry of Community Safety and Correctional Services, which I'll refer to as simply CSCS, and health—our consensus seems to have been formed that our emergency management statute was lacking. Primarily, the lack surrounded the issue of powers that were available to government in times of emergency. This conclusion had been reached by ministry people, and they sought clarity for the legal basis for the actions that could be taken for government in an emergency.

I say to you that you probably have in your possession—we've distributed—legislation that comes from other provinces and from the federal government, and it would appear that, on a cursory glance at that legislation, our legislation looks remarkably different. Whether that means our legislation is lacking is not a question for me. The question of whether or not, as I say, there is a lack or whether the legislation should be amended was not a question we were asked to look at.

The other bit of context that I think is really important and that came home to me as I met with people from the ministries of CSCS and health was that there was a very real concern that there would be another health crisis in the winter of 2004. People had worked long and hard through the SARS crisis, and I can see the concern expressed in their comments. Nobody ever knew why SARS decided to strike as it did in Toronto and not Vancouver or Colorado.

There was talk of the avian flu. There was talk of other pandemics that could strike. These people charged with the responsibility of emergency management were concerned that a similar crisis could occur in the winter of 2004. I can't tell you about the science of that. I can simply tell you that that was the concern that was being expressed, along with this consensus that the powers available to government in the time of an emergency were lacking.

So, in early December, our ministry, and specifically myself, assisted by Graham here, were asked to prepare what has been given many names—standby legislation, contingency legislation—to prepare legislation that could be introduced possibly by government in case of an urgent situation. In order to accomplish that work, we were asked to sit down with ministry officials—and this, again, primarily was the ministries of community safety and health—to hear about their concerns and to think about the principles that may need to be employed and what might need to be done to the Emergency Management Act.

The second thing we were asked to do was to think of a long-term strategy on how to consult about this issue. That was a point that we actually never got to. We did think in terms of consultation. It's a very—as I'm sure you appreciate—sensitive and explosive issue. We never got around to that, and I'm assuming that this is what your committee is doing now. But we did accomplish the first piece, and in order to accomplish that, we did research, we looked at other jurisdictions, and I'm hoping we provided to the clerk four binders of material that we gathered, which includes articles and legislation. A great deal of work has been done very recently in New Zealand and in the United Kingdom where the very topic is being discussed, not without some controversy. I want to supplement that material with the material I've mentioned very briefly.

Could I say at the outset—and I may have alluded to this already—that this task I personally found very challenging and sometimes difficult. On the one hand, you're forced to contemplate emergencies, things that people don't want to think about: floods, nuclear meltdowns. I think probably the scariest one of all for people was the health crisis: with an unknown disease moving through the community, how does one stop it?

On the other hand, you are forced to look at the steps which possibly need to be taken in order to combat that emergency. As a lawyer I might say those steps challenged me, in the sense that they pitted you against some of our basic fundamental civil liberties. These are not easy things to contemplate.

As we considered and listened to the submissions and points made by the two ministries, the things we were asked to consider were, first, who would call an emergency. Who is the appropriate person to call an emergency? Is it always the Legislature? If not the Legislature, is it cabinet? If not cabinet, is it the Premier? Is it a minister? Should a declaration be reviewed by the Attorney General? Should it be reviewed by a court? What, exactly, is triggered by the declaration of emergency? Is it a full panoply of powers or is it a tiered response that responds to a particular emergency?

I should also say that one of the early questions to arise is, should any of these powers be located in one statute or should they be located in specific statutes. So you'd find information about fighting forest fires in legislation for natural resources, information about health in the health statutes and so forth. Or should there be one broad piece of legislation?

What are the time limitations? How long should a declaration of emergency last? Should those declarations be renewed and, if so, by whom?

What is the reporting mechanism? After an emergency, should there be an obligation to report to the public, to the Legislature and so forth?

Overall, moving through all these considerations, what is the appropriate role of civil servants, ministers, cabinet and the Legislature?

Last, I should say, and you'll see this, our task was to consider a potential amendment. Of necessity, the amendment was something that would be introduced on an urgent basis. It would appear that if that urgency was present, there'd be no time for public consultation.

Fundamental to the draft we developed is that it was sunsetted. In other words, it was something that would come in and then die of its own accord, hopefully when an emergency was finished. So it was never intended to be a long-term response to the very issue that you're considering.

Again I want to emphasize the need—whether or not there needs to be any amendment is not something we were asked to do.

With those caveats, the draft I'm going to show you was never reviewed by the other ministries. When we discussed the principles with them, we discussed scenarios, we listed powers, we debated, we talked about scenarios, we talked about checks and balances, but we never shared the actual drafting or draft with them. In one exception, probably halfway through the process, we provided one copy to the legal director at CSCS for her review to assure her that in fact we were working and did have a draft. Certainly it was never presented to or reviewed by cabinet, and obviously there was never any public consultation. So that's the context.

Without any further comments, I want to distribute the material we've prepared for you today. While that's being provided to the clerk, I can just outline what it is.

We are giving you a copy of the current act so you'll have it in front of you. We're also giving you our chart. It's a summary of the provincial legislation. It should not

reveal anything new to you. It's just our summary of what we think are the critical points found in other provincial legislation.

Also, you'll find that the second piece of information is a summary chart of the Canadian federal legislation and legislation from New York state, the United Kingdom and New South Wales in Australia.

1020

A third piece of information, which is a little novel and which I'm hoping will be helpful to you, is our survey. We contacted the other nine provinces and the federal government and asked officials there, how many times are you aware that there was a declaration of emergency, either at a provincial level or a municipal level? The third chart is a summary of those responses.

The fourth thing in the package that you're going to receive is the 1963 legislation. I'm told there was some talk about the predecessors to our current act. There was an Emergency Measures Act introduced in 1963. You'll see in the materials that it was repealed in 1976. You are all aware, then, of the Mississauga train derailment in 1979. In 1981, I believe it was, the then Solicitor General, Mr McMurtry, released a white paper which led to the introduction of our current act in 1983, which remained unchanged until, I believe, 2002-03, when we had the so-called SARS amendments.

The last thing in that package is the draft legislation, which I've been referring to. If I could take you to that, it's critical that you look at it with the current act in front of you. There's an explanatory note. We worked with legislative counsel to prepare this. I won't take you through the note.

If I could take you to the act itself, the act has six sections. The meat of what we discussed is in section 2. It's a very lengthy section. In section 1 we've made a small amendment to the definition of "emergency" to refer to health diseases. It was intended, if this act ever got introduced, that section 1 would remain in place. It's not to be sunsetted. It was our opinion that the definition of "emergency" needed to reference health. The second amendment you see here, the local services board, is simply a housekeeping matter.

If I could take you, then, to section 2, we provide some definitions for "Commissioner of Emergency Management." I believe you know that that currently is Dr Young.

Then we get to 7.4(1), which is the declaration of emergency. In this draft, the consensus was that it should be the cabinet that would make a declaration of emergency.

Subsection 7.4(2) is the list of powers that would be triggered. Unless you want to go to some of the specific powers, I don't intend to go through them. I think you've seen references to lists prepared before. I would add that none of these powers is unique to the Ontario draft. All of them appear in one form or another in some other piece of legislation. Some of them are a little bit more novel than others. For instance, paragraph 14, the entitlement to leaves of absence, I think is an Ontario innovation.

I'm now looking at page 3 of the draft. Subsection 7.4(3) provides that in an urgent situation—again, when people begin discussing this, there's always a what-if. This is to respond to, "Well, what if you can't assemble the cabinet?" It says that the Premier can do it if it's urgent. You might ask, what is urgent? Is that defined? No, it isn't. Did we consider a definition? Yes, we did. But it's there. Would a Premier, on his or her own, consider a situation so urgent that they would declare an emergency and trigger all of these powers? That's a question I can't answer.

Delegation: The cabinet can delegate the responsibility to make orders under 7.4(2) to a minister, or, if the Premier has declared the emergency, the Premier may do it.

The other delegation possibility here is to the commissioner. This is something where, in trying to achieve the balance here, the question always was, if we're in an emergency and somebody has to act quickly, can you assemble the cabinet?

I'm sure you've heard reference to the so-called directives that were issued during SARS, that were coming out, I'm told, almost on a daily basis to the hospitals. Were they enforceable? If those types of directives had to be issued in a health emergency, could you wait for cabinet; would it be more appropriate for a minister?

You'll see later on, with the delegation to the commissioner, that we tried to provide a check around this. You'll see that any orders issued by the commissioner are only in force for two days. They have to be reviewed or confirmed by the minister, if the minister is in charge, or by cabinet or the Premier.

You'll see in subsection 7.4(6), the powers of the Premier: basically a restatement of what's already in the act.

I'm very sorry I didn't point this out, but the scheme of all this is to take what are currently sections 7 and 7.1, pull them out and hold them in abeyance, trigger all the things we're reading about now, and when the sunset period is reached, simply go back to the status quo. The intention was never to introduce long-term legislation.

If anyone is asked to perform services, the power to provide for terms and compensation is in subsection 7.4(7).

In subsection 7.4(8), employment is protected if you're asked to render services.

An explicit exemption over freedom of information: That may have been addressed in part by some of the health legislation that was recently introduced.

Subsection 7.4(10): The legislation overcomes all agreements, collective or otherwise, if an order is issued.

Calculation of time periods: again, a restatement of what's in the current act. If you lose a limitation period during the course of a declared emergency, you won't be affected; an order could be made.

Termination: How are emergencies terminated? You'll see that the stated time period for a declaration, if made, is 45 days. I need to comment on that, because as you

look across the country, you'll see that in the ordinary course, emergencies are seven, sometimes 14, days. You won't find any reference to a time period of 45 days. This was something that was part of a very lively debate. My sense is that as you look at the emergencies referred to or contemplated in the other legislation, they also tend to refer to natural emergencies: fires and floods. I'm not sure that anyone, in their contemplation, had in mind something like SARS. The principle we were asked to keep in mind was to think of legislation that could be broad enough and flexible enough to respond to any type of emergency. Forty-five days was the agreed-upon amount, but whether that would be acceptable to a cabinet or to this committee is something I leave to you.

Declared emergencies and orders made under those emergencies could only be extended by the Legislative Assembly.

In subsection 7.6(1), the Premier needs to table a report on the emergency to the Legislative Assembly in 180 days. If any orders are made by a commissioner, those need to be part of the report.

Section 7.7, on page 6, talks about when orders take effect.

In section 7.8, orders can be general or specific.

Subsection 7.9(1) is a critical section. This is the part where you sit back and take a deep breath. It's two short lines, but it says that any order made under this act during the declared emergency takes precedence over any other law. But subsection 7.9(2) goes on to say you can't use the act to amend the act itself. The act is as it is.

There are provisions for retroactive orders, in terms of destruction of property, and one other portion to deal with price-fixing.

Section 7.11 is the offences section.

1030

In section 7.12, we say that 7.2, which is the order-making authority, and 7.4, which is the extension, are repealed within 18 months, and 7.3 and 7.5 to 7.11, the more operational features, are repealed in two years to allow for the possibility that there was a declaration of another emergency or there were orders that needed to run their course for an additional six months.

Section 3 is essentially a rewriting of the liability provision. It's suggested that the language could be modernized. Essentially anyone acting under this act is not liable for actions they take unless they are grossly negligent. That includes people who are asked to do things under subsection 7.4(2).

The act binds the crown, in section 4, and then sections 5 and 6 talk about commencement and the name of the act.

That is what we had prepared. We were asked to start this in December. We were asked to be ready. Fortunately, we never had to refer to this. The bulk of this work was done in January. There was still more work and discussion going on into April of this year. Aside from the distribution of an early draft to the assistant deputy minister and the secretary of cabinet's office in January, and one copy that went to the legal director, the draft was

not shared outside our ministry. We present it to you today, and I hope it assists you with your work.

The Acting Chair: Thank you, Mr Twohig. We'll move to the two parties we have. The first will be Mr Kormos.

We've allocated ourselves an hour, until 11 o'clock. We'll use about 15 minutes per caucus, but I will leave it to the committee to determine if any additional time is required, given the nature of our next deputation.

Mr Kormos: I'm sure Mr Hudak would want me to have the Conservatives' time.

The Acting Chair: I think we'll work within the context of those who are here with us this morning. Mr Kormos?

Mr Kormos: It seems it was a year and change ago that Bob Runciman was the Minister of Community Safety and we had first, second and third readings of the most recent amendments to the Emergency Management Act. Am I correct in my time? It was the spring of 2003.

Mr Twohig: The so-called SARS amendments.

Mr Kormos: Yes, that's right. I remember the New Democratic Party expressing concern about some of the arbitrary powers given to the government. You may not recall that part of the debate.

Mr Twohig: No, but I've read the provisions, and as I read them, they are mostly what I call helping provisions: leaves of absence and assistance.

Mr Kormos: I recall the debate around particularly section 7.1, which is the thrust of it. In any event, early in when were you asked to prepare standby legislation?

Mr Twohig: In December.

Mr Kormos: In December of?

Mr Twohig: Of 2003.

Mr Kormos: After the election of the new government. Are you guys legislative counsel?

Mr Twohig: No.

Mr Kormos: You're not legislative counsel?

Mr Twohig: We're policy branch.

Mr Kormos: OK. You're policy people. Who asked that this be done?

Mr Twohig: I think the impetus came from ministry officials, who, out of a sense—

Mr Kormos: Which ministry?

Mr Twohig: I think the commissioner at the Ministry of Community Safety and the officials at the Ministry of Health.

Mr Kormos: OK, so health and Sol Gen/corrections. How did that happen? Did they call your supervisor? Did they call a deputy minister over at the Attorney General's? I don't know how this stuff works.

Mr Twohig: As I understand it, during the crisis, AG lawyers were asked to assist from time to time on advice. We were on-site or we were consulted from time to time. I think that as part of the general turnover in government, any ministry official or any responsible civil servant brings issues to the attention of a new government. As I say, foremost on the minds of emergency managers was what they thought to be a deficiency in the act, having gone through the SARS crisis and the blackout.

Mr Kormos: But see, policy people, as compared to legislative counsel people, spin these webs, right? I'm sorry; they come up with the policy, they generate policy, as compared to merely writing down what you request to do. So I suppose what's confusing to me is why Sol Gen/corrections is going to AG and AG's policy people. Sol Gen/corrections has policy people.

Mr Twohig: They didn't come to us specifically and ask that we do it. We were asked by government to assist them. We were asked as the sort of neutral, I guess at arm's length—we aren't the front-line managers—to consider, if powers were needed, what those powers would look like. That's our role, and that's why I wanted to say to you at the outset that we are primarily the emergency managers.

Mr Kormos: So you in fact then didn't get any direction or guidance from policy sources within Sol Gen/corrections.

Mr Twohig: They made a lot of suggestions, but not all of them were necessarily followed.

Mr Kormos: Then let's back up to the Runciman amendments in 2003. I trust that they were being prepared perhaps during the course of 2002 into 2003, when they were finally presented. Were you folks involved in that?

Mr Twohig: I don't want to sound absolute about this. I don't think we played the same role there that we played here. I think we may have played the same role that you play in any government bill. You have an opportunity to comment. But I don't believe we were the lead.

Mr Kormos: I suppose part of what concerns me is that Runciman, whom I like and have known for a long, long time, is a tough nut. I mean, he really is. He's a hard-liner when it comes to law and order and that sort of stuff. I suppose what surprises me is that here we are, we had the Runciman amendments, and he's a pretty right-wing—well, he is—kind of guy, not afraid of being accused of assuming too many arbitrary powers. Yet, based on what you and Dr Young would say, so much was not included in his amendments. I'm trying to figure out why Runciman, a hard-line right winger and law-and-order kind of guy, would not have contemplated—maybe he did—would not have included, any of these provisions at least in his first reading of the bill. That's what I'm trying to get my head around.

Mr Twohig: There are a number of things I can say about it. Firstly, I wasn't part of the team that looked at it. Secondly, if I were, I think I'd have problems talking to you without waiver from the previous government about what they decided to do or not do. So, leaving that aside, I go back to my initial comment: Are these needed? That was never a question I looked at.

Certainly, if you go back to the white paper of 1981, we had the Mississauga train derailment, we have Mr McMurtry—and it's right in the paper. They say, "We consider the need for special powers," and we say no. We say—

Mr Kormos: And McMurtry is a pretty smart guy.

Mr Twohig: Well, and he says, “We’ll leave it to the common law.” That was 1983 or 1981. When you look at the other provincial statutes—and we were discussing it this morning—of the other nine provinces and the federal government, seven of those jurisdictions, post-charter, have passed legislation with these wide, sweeping powers. They thought it was necessary. Presumably they read the McMurtry paper and disagreed. But that question, whether there’s a need or not, I can’t carry that. I was asked to assume that there was a need, and if we asked you to construct the powers with appropriate checks, what would it look like—

Mr Kormos: Fair enough. But now, because we talked about that just a little bit here in the committee, because we’ve got that McMurtry white paper, the 1981 paper, and all of us—I think it’s pages 26, 27, 28, and boom, right to that special powers, you’ll see it. It’s not the same politics as mine, but I knew him as a smart guy when he was justice minister and I consider him a pretty smart guy now. Maybe he’s changed his mind, but do you dispute the conclusion he reached as a lawyer?

Having said that, because we also tried to reflect on what changed from 1981, the only thing we could think of was the charter, right? So I suppose I’d ask you to tell us what about the charter would change or impact on the conclusions that Minister McMurtry, as he was then, reached in his report of 1981.

1040

Mr Twohig: I absolutely take no issue with the fact that there is an argument. That’s the threshold question: Is there a need for change? Did the charter in fact make McMurtry’s argument even stronger? I appreciate that that’s an argument, but to address that argument, I never got to that. I was asked to assume that there was a need, and if there was a need, the direction was, “Have something ready. We don’t want to be caught. If it turns out that people aren’t following directives, if it turns out that the evacuation of people needs to take place and someone says, ‘Well, wait a minute; you don’t have the authority to do it,’ what would those powers look like?” That’s what I did. But your question is certainly the critical threshold question.

Mr Kormos: As a lawyer, then, and you’re a senior lawyer in the Ministry of the Attorney General, what is your advice around—we’ve got to go somewhere; we’ve got to know.

Mr Twohig: I don’t want to appear as if I’m not answering your question, but I think it goes to the issue of, what’s the role of ministry lawyers? Are they to give advice to the executive or are they to give advice to legislative committees? I’ve always understood that it was to give advice to the executive. I don’t know if the clerk can help me here, but I’m not sure exactly what my role is—whether it’s to provide advice, constitutional or otherwise, to a legislative committee.

Mr Kormos: Please, if I ask you to do something that you understand—because the other day the Chair asked legislative counsel to do some legal research, and legislative counsel let him know—very politely and properly,

of course—that he was barking up the wrong tree. He has been sent here to do a specific job and he’s going to do it, but he’s going to do it well. It wasn’t you, Chair; it was the former Acting Chair. You would know better than to ask legislative counsel to do something that wasn’t in his billing.

Having said that, what do we do then? We have a dilemma. I don’t want you to do something that you don’t understand to be part of your job, because I understand that part of it. So what are we to do? If we want other—I mean, heck, you’ve got a couple of lawyers on the committee: Ms Broten and Mr Zimmer. We could, I suppose, ask them for their opinion. Maybe it would be worth about as much as we’re going to pay for it. But what are we to do if we want an opinion on the McMurtry paper and his conclusions about the adequacy of the common law? What are we to do? Help me.

Mr Twohig: I would truly like to help you. My response to you is, yes, it is an issue. How you resolve the issue is not something—is it purely legal? It’s more than that. If people’s lives are at stake, if unrest in the community is at stake, does the government have the authority it needs to respond? If you’re content with the common law and if you’re content that we in Ontario have got it right and we’ve always had it right, then I would say to you that you don’t need to do anything. You’ve heard a lot more than I’ve ever heard from emergency workers, people who are working out there in the field, as to whether there is a need or not. If they’re not convinced there’s a need, and aware of the past actions of this province, then why go forward? But if you think that something needs to be done, this is a potential solution.

The solution, I say to you candidly, is not perfect. There are other options as to how it could be—

Mr Kormos: This is draft, not submitted to cabinet, so it hasn’t been vetted by cabinet. Was this the subject matter of discussion with your own minister?

Mr Twohig: I think the actual copy of the legislation didn’t go to our minister until June. He certainly was aware that we were asked to do it. He was aware of the principles we were considering, that there were powers, that there were checks and balances on the powers, who would issue the powers. There were general discussions. The minister was aware of that, because he obviously knew we were asked to do it. But as I said at the outset, both personally and professionally, it’s not a pleasant thing to contemplate. It was government trying to be responsible, trying to be ready should something happen.

Mr Kormos: I don’t quarrel with you doing your job. Lawyers are, after all, the world’s second-oldest profession. I understand.

The Minister of Community Safety: it was his ministry amongst others, or his ministry that sought the input?

Mr Twohig: I would say that the Ministry of Community Safety and the Ministry of Health, given their experiences—health in the SARS crisis and CSCS both in SARS and in blackout—were the prime, and I would look to them for leadership, who said, “We don’t think

we've got the right mix yet. We don't think we have the authority."

Mr Kormos: See, now I'm sort of wondering, because all the stuff around this committee—first the government wanted this to be a select committee so it could have its own Chair and Vice-Chair and travel all over North America. But now at least two ministries, Mr Smitherman's and Mr Kwinter's—and again, you don't know what they know; you can't go inside their heads—it seems that they should have known that this work was being done by you—

Mr Twohig: Well, they did know. They certainly should have known, because that's who we met with.

Mr Kormos: I'll be darned.

Mr Twohig: That's who we met with, but they did not have the actual legislation.

Mr Kormos: Sure. No, no, because—why's that?

Mr Twohig: First of all, it's the nature of the legislation and, second, I believe our assistant deputy minister, my direct superior, believed that it's very difficult to draft a document, particularly a sensitive document like this, when there are 18 or 20 drafters. It was more appropriate to talk about the policy, talk about some of the principles, and leave the drafting to us. We never got to the stage where someone said, "We might need to use this. Show us the document."

Mr Kormos: When you say "sensitive"—you talked about this document being as sensitive as it is—you're talking about its potency?

Mr Twohig: Goodness, yes. The subject matter itself, emergencies—dare I use another word—is alarming, and the steps that you need to deal with an emergency are also potentially alarming.

Mr Kormos: As I look at, in particular, the sections dealing with the usurpation of municipal powers, which may require a municipality to provide such assistance—

Mr Twohig: Is that in the current legislation?

Mr Kormos: I'm sorry, it's in your proposed—there is municipal stuff, but in your new section 7.4, declaration of emergency, subsection (6): "If an order is made under subsection (1), ... the Premier may," but then you've got "direct and control the administration, facilities and equipment of the municipality in the"—basically, it sends city councils and mayors home.

Mr Twohig: That is a restatement of what's currently in 7 and 7.1.

Mr Kormos: Yes, but show me where in 7.1 in the current bill, because I took a quick look at that.

The Acting Chair: As Mr Twohig's looking for that information, Mr Kormos, if you can conclude with this question at this point, then we'll let the government—

Mr Kormos: Thank you, Chair.

Mr Twohig: Subsection 7(3) of the current legislation.

Mr Kormos: The order in council may, if it provides—I'm sorry, 7(3)?

Mr Twohig: Yes.

Mr Kormos: "Emergency powers."

Mr Twohig: Yes: The "Premier of Ontario may, where he or she considers it necessary, direct and control the administration, facilities and equipment of the municipality to ensure the provision of necessary services," etc.

Mr Kormos: OK. That wasn't one of the extraordinary—

Mr Twohig: No. Subsection (4) again refers to—we tried to pull 7 and 7.1 out, keep the things that were necessary during the course of the running of this legislation and then have it—

Mr Kormos: Are we supposed to give this sensitive document back to you?

Mr Twohig: No.

Mr Kormos: So it's no longer sensitive?

Mr Twohig: You're the committee dealing with it and I've come here to try and assist you.

Mr Kormos: So I don't have to ask one of our staff people to rush and photocopy it so I can secret away my own copy. OK.

The Acting Chair: Probably not in this very public forum.

Mr Kormos: Thank you kindly.

The Acting Chair: Ms Broten.

Ms Broten: One of the things our committee has been struggling with—and certainly your analysis of what you struggled with as well is not dissimilar. But I guess one of the additional hurdles that we're struggling with is, if change is needed, do we need to do this? Do we need additional powers?

One of the things we asked the council for community safety, who was here, was whether an examination had been done of all the variety of statutes that exist out there that do have powers, because the issue remains whether or not it's a clarification and a centralization of powers or new powers all in all.

We've had conflicting evidence before the committee about whether we can do a certain thing—go on to someone's private land and build a dike, for example. Dr Young indicated that perhaps we could not do that; the Ministry of the Environment indicated that, in certain circumstances, we can absolutely do that. One of the things I think we were hoping you would provide us with today is an analysis of the powers that exist in the other 100 pieces of legislation out there. Was that something that was undertaken?

1050

Mr Twohig: No, it was not, unfortunately. As I said, we were asked to start from the assumption that there was a deficiency. Certainly, we're aware—I'm not aware of the details—that under health legislation, community health officers have certain powers. The sense that we were given was that you will find powers to deal with extraordinary circumstances in various specific pieces of legislation, but they're all finite, and none of them are broad enough or flexible enough. That was the assumption.

The current legislation talks about all of the existing powers in various statutes being centralized in the

Premier at the time of an emergency, but the assumption was that none of those powers were broad enough to deal with the types of emergencies that were encountered with SARS and the blackout.

Ms Broten: I'm sure you'd agree with me, though, and I raised this with Dr Young as well, that the bringing together of powers to the Premier—and we don't even know what the list is—is a bit problematic for this committee. We don't even have a list to know what powers we would be giving to the Premier. If you didn't undertake it, is it something that could be undertaken now to assist this committee, in terms of that analysis of what powers exist in all other pieces of legislation, so that we can put together a list of those powers?

Mr Twohig: For instance, our ministry has been asked to review our 130-odd statutes to answer that very question. I understand the Chair has written; I'm not sure what other ministries you've written to, but certainly for our ministry, we're undertaking that.

Ms Broten: So that's underway to help us.

Mr Twohig: Yes, in our ministry for our 130-odd statutes.

Ms Broten: OK. The other issue that we've been struggling with is the issue that Mr Kormos raised. First of all, we want to know what powers exist out there to see maybe if the issue is that no one really knows what powers exist, because there's no centralized list. So we'll get the list together.

Then, obviously, in terms of the types of suggested issues that Dr Young has raised in his testimony, there are the gaps; for example, the ability to enter private property. What we haven't had before the committee was anyone to provide us with insight into what type of case law exists as to infringement on rights, an examination of the Charter issues that we may or may not face. That is certainly something that members of the committee have expressed to a number of witnesses: that we're struggling with that issue. I wonder, again, was that type of legal analysis undertaken when you put together this potential stop-gap legislation?

Mr Twohig: The two pieces of information I can give you are to refer to our cross-country survey of when emergencies have been declared. You'll see that there haven't been very many times when full-out provincial emergencies have been declared across the country, but there have been many municipal emergencies. The second thing is to say that when we looked at these statutes, and we did a statutes judicially considered review, there were no cases. So it appears that—and maybe the argument is, do you need this?—the other provinces apparently have it, that they have fortunately not resorted to it too often, and it appears not to have been considered by the courts.

Ms Broten: So we have no judicial consideration of other statutes.

I just want to go back over what Mr Kormos asked you as to the type of advice that you can give this committee. For example, if we wanted to have an opportunity to talk in depth about some of the constitutional chal-

lenges that we could or may face as a result of this legislation, is that a dialogue that, with some preparation time, we could have with you?

Mr Twohig: Firstly, I'm not with the constitutional law branch of the ministry, so I wouldn't even be qualified to give it to you. Secondly, I think the answer from the constitutional law branch probably would be that they see their role primarily to serve the executive and not the legislative. But I could be wrong on that.

The Acting Chair: With permission of the clerk, at this point, as I understand it, the question of legal advice to the committee is one that the subcommittee had some deliberation on. So we set that aside, at least for the time being—whether it was needed. My understanding from the MAG is that for questions that are asked at committee, there is an obligation to respond, but for them to provide advice to the committee as a body is not something necessary in their mandate. So I guess as they come—the deliberation between seeking specific responses to specific questions as opposed to more generalized advice. I guess if we needed further advice, the subcommittee would have to give further consideration to that. That's as I understand it.

Mr Kormos: Chair, if I may, on this very important and very specific issue: Look, the standing orders were changed to permit committees, as this committee is right now, to prepare draft legislation and have the Chair present it. That changes the price of poker substantially, because then the committee has in many respects, in that legislative drafting role, the role of a member of the executive council, a minister.

We're being told that the Ministry of the AG is mandated to provide legal advice to ministers/ministries in the course of their preparation of legislation. Once the committee has a similar role, it seems to me then we've got to address—and we've got the PA to the Premier, we have a woman who sits at Mr McGuinty's right-hand side and we have the PA to the Attorney General here, Mr Zimmer, who sits at Mr Bryant's left-hand side. It seems to me we should be able to get clarified the issue about where we go to for the sort of legal advice that a minister/ministry would be entitled to in the course of preparing legislation.

Ms Broten: Can I ask you by when you think you would have that list of powers completed? Certainly, for us, it's a fairly urgent need that we have an understanding of what powers exist in the FPPA or the various pieces of legislation. Do you have a sense of what the time frame will be on that?

Mr Twohig: Again, we were asked to do it for our ministry and for the 130-odd statutes our minister is responsible for. I think the deadline was September 15. I can tell you that, based on my own experience, I don't believe you're going to find buried in the Innkeepers Act or the Time Act or the Courts of Justice Act the kinds of powers we're talking about here. I'd be very surprised.

Ms Broten: So you're not looking at, for example, any of the acts that would fall within the Ministry of the Environment's responsibility.

Mr Twohig: I think your Chair has written to those various ministries and I think they'd be in the best position. I know that the critical ones—for instance, the Ministry of Health, the Ministry of Natural Resources, the Ministry of the Environment—would have some capability to respond in unusual circumstances, but I very much doubt that the Ministry of the Attorney General would, but we will conduct a review.

Ms Broten: Thank you. I'll pass it on to a colleague if they have—

Mrs Sandals: Thank you very much. This is very helpful. If I could just go back and get some clarification on some issues that have already been raised. Not having been here at the time of the SARS amendments, could you just help me a little bit with the timing? Those were amendments that were tabled during the SARS crisis?

Mr Twohig: I believe there were two of them and I believe they were introduced in the spring, about the same time the SARS crisis was underway in 2003.

Mrs Sandals: So these would have been two short and sweet, if I could put it that way, amendments during the midst of a crisis, that these are things we need to fix immediately in the midst of a crisis as opposed to a more thoughtful analysis of the overall picture? Is that a judgment you're prepared to make?

Mr Twohig: I don't know about that. But I do know that I remember being struck, and I think you see reference to this with other jurisdictions as they struggle with this. The time to do this is when there is no crisis. The time to consider emergencies is when you're not dealing with one.

Mrs Sandals: So it would be safe to say the SARS amendments were a mid-crisis reaction, whereas what you've got here is a proactive piece of thinking when there is no crisis.

Mr Twohig: It would appear, but I have no—
1100

Mrs Sandals: If I can then just clarify the timing of this: If I understand you correctly, the Commissioner of Emergency Management and, I presume, the chief medical officer of health have shared concerns and made suggestions. Is that correct?

Mr Twohig: Unquestionably.

Mrs Sandals: But they have not seen the legislation and they have not been informed of the content of the draft legislation.

Mr Twohig: Other than being shown a list of potential powers—for instance, I know that Dr Young has shown you a chart.

Mrs Sandals: Yes.

Mr Twohig: That chart was generated in our office to demonstrate a summary of our review, and he has taken it and used it. We've certainly shown charts to people: "These are what powers might look like. These are discussions about how long a declaration might last, about when a report might be made, about the role of the commissioner." Certainly all the principles have been discussed, but in terms of the actual draft, there was no need to share it, because we never—

Mrs Sandals: Fortunately, there was no emergency, so there was not that detailed discussion or follow-up with the other ministries.

This is actually a question for the committee clerk, perhaps, or the committee Chair. We've been discussing the issue of who can give us advice. Legislative counsel seems to be here for drafting and legal branches of various other ministries are here to advise their own ministers, which raises the legitimate issue of where the committee gets advice. Is the committee authorized to hire its own constitutional legal counsel?

Mr Kormos: In the Yellow Pages, the law society has a number you call for 30 minutes of free advice.

The Acting Chair: Mr Kormos, thank you.

My understanding, Ms Sandals, as best I can—and quite frankly the subcommittee may be in a better position to respond to this than I would be—is that the committee was given a certain degree of latitude and powers to do certain things and require such resources as may be necessary. I would think, from that standpoint, it would have the authority to do that if it determined that was the most appropriate thing to do.

Mr Kormos: On a point of order, Mr Chair: I know you're trying to be helpful, but I don't think it's helpful for the Chair to delineate in such an expansive way what it perceives the powers of the committee to be. The issue is more fundamental than that; that is, if this committee is tasked with drafting legislation, then why isn't it having access to the same governmental resources as a ministry and a minister who is tasked with drafting legislation? That's number one.

Number two, I'm very concerned about the whole business of the SARS amendments. SARS was in the summer of 2003; I remember it well.

The Acting Chair: Mr Kormos, in the context of a point of order—

Mr Kormos: You've got to hear the point of order first, and then you can rule it out of order.

The Runciman legislation was in the spring of 2003. I'm hard-pressed to understand any reference to the Runciman amendments as SARS amendments. Maybe we could get a little bit of clarification on that. That may not be in order.

The Acting Chair: Thank you. I'm going to rule those out of order. From the context, I was responding as the Chair to a question from a member of the committee to the extent that I could, with reference to the subcommittee and its understanding and discussions around matters related to acquiring additional expertise. Thus I was referring to the government member on that subcommittee as one of those who might be able to respond to that, since the government currently has their allocated time available to them.

Ms Broten, do you have anything you want to—

Ms Broten: I think we can certainly take a look at this issue at the subcommittee level, perhaps seek some advice from the House leaders who gave the committee the directions and have some further discussions. I think we've got some clarity today to the extent of what the

Minister of the Attorney General thinks they can provide to us right now under—

Interjection.

The Acting Chair: Mr Kormos, respectfully, it's not a dialogue across the floor.

Ms Broten: I think it's an issue we do have to deal with, and I suspect that Mr Kormos and I and the other members of the subcommittee can have a lively debate and report back.

The Acting Chair: Which would be excellent.

Mr Kormos: I think we should have a debate on the record.

Mrs Sandals: May I carry on with my questions, please?

The Acting Chair: You have about another two or three minutes, and then we'll have to determine whether or not we want to extend the hour allocated to the MAG.

Mrs Sandals: Thank you very much. Not having had an opportunity to look at the legislation extensively—something we're obviously all going to want to do is go home and read it—one of the things I notice is that in the case of a declaration of an emergency, whereas my recollection is that under the current legislation it is the Premier who is authorized to call a provincial emergency, in fact you have, for the most part, vested the power to call a provincial emergency in the Lieutenant Governor in Council, ie cabinet. I would be interested in the thinking around drafting the change in who is responsible for actually triggering the calling of an emergency.

Mr Twohig: I think that comes in part from a look at other pieces of legislation. Again, it's always this question of checks and balances. If this were accepted, a declaration would trigger extraordinary powers. Who do you want making that decision? Is it the collective wisdom of a cabinet, or is it simply one individual? In this case, the argument we would put forward is that it ought to be the cabinet.

Mrs Sandals: So, as you have been drafting what you've described, I think, as contingency legislation, you've actually—although there are clearly a whole lot of powers that have been added in provincial emergencies which didn't previously exist—been looking at the other side of the balance sheet and, in fact, inserting more checks and balances into the act than may currently exist. As I've said, obviously I've not read this over, but is it a fair reaction that you've tried, while laying out additional powers, to also insert additional checks and balances?

Mr Twohig: Without question. There are more powers, so we tried to put as many checks in as we could. Critical to all of our thinking was to try to achieve that balance.

Mrs Sandals: As we've noted here, part of the struggle of the committee is to find a balance. While you have been thinking about this, you have actually been thinking about the balance issue as well.

Mr Twohig: Certainly, and there's a range on the declaration: You could leave it to the Legislature to declare an emergency; you could leave it to the cabinet

upon review of the Attorney General; you could leave it to the cabinet upon the review of a court, although that might be a bit extreme, and I don't know why you'd want to. There are all kinds of scenarios you could think of.

Mrs Sandals: Presumably what one is trying to do is find a balance between expeditious timing and reasonably broadening beyond one person the base of people who need to at least be involved.

Mr Twohig: Exactly. Time and time again we heard from operational people about efficiency and being able to act in a way that we could save lives and prevent further danger.

Mrs Sandals: Just a brief comment: While you have not been asked to address the issue of need, perhaps the need for the legislation is a political question, and that is why the committee is here, not just to look at the technical but also at the political need and are we adequately prepared to handle emergencies, which is more of a public and political question.

The Acting Chair: Thank you, Ms Sandals. The government's time has elapsed. I need to understand whether we actually want to extend the time.

Ms Broten: I'd ask for unanimous consent.

The Acting Chair: We do have the legal counsel, who is here, and presumably could present in the afternoon since we have time available to us at that point, should this go on until our recess.

We'll do 15 minutes if we can, and that would allow each of the caucuses present to have a couple of shots at this process. Mr Kormos.

Mr Kormos: Thank you kindly. I should also congratulate and thank Hansard because, as you may have noticed, they've been publishing the Hansards of this committee extremely promptly. They are grossly understaffed—they are, and people should know that. I appreciate they have the luxury of not having a whole lot of committees, but I'm still grateful to them for having produced with such speed the Hansards from the early part of this week already.

1110

Chair, I'm really concerned about this exercise. As the PA, Ms Broten has very skilfully commenced this committee with enthusiasm. She appears not to have been told of the work being done by the Ministry of the Attorney General in terms of drafting legislation, when in fact at least two ministries in addition to Attorney General would know about it.

It seems to me as well that if Dr Young was—as he was—the first participant in this committee hearing, these gentlemen should have been the second, in view of the work that has already been done canvassing the sort of powers that the province might, were the Legislature to permit it, assume. That's number one.

I'm really disappointed that we have this “Golly gee, let's examine emergency management legislation and where this province ought to be going,” when in fact—we have legislative counsel sitting here shaking his head. He's not shaking his head literally, but he may well be shaking his head figuratively, saying, “What the heck am

I doing here? These guys have already drafted a bill.” I suppose at the end of the day it could make his life easier. So that’s number one.

Number two, around this whole business—and I’m not in any way critical of either of these gentlemen for making it clear that they understand that their advisory role is to the minister and not to a legislative committee. We’ve got a whole lot of very competent, skilled, experienced lawyers down there on Bay Street—our Bay Street, the Ministry of the Attorney General, not further south. There are some skilled ones further south, but those are the expensive private sector lawyers. I have every confidence in the lawyers in the civil service.

We have to, rather than saying, “Oh well, gosh, golly gee”—look, if at the end of the day this committee has to spend public dollars to retain private counsel because it can’t get those resources from within government, then I suppose I’ll have to sit and at least be prepared to be persuaded that that’s what has to be done, because, as you know, I’m not gung-ho or overly enthusiastic about that.

It’s incredible that the government says to the committee—it was somebody’s bright idea to have this committee embark on this exercise, notwithstanding the work that had been done by the Ministry of the Attorney General under the direction of the new post-election Minister of Health and Minister of Community Safety, who appear to have had in their minds some idea about the need for amendments or at least the need to consider potential amendments or else they wouldn’t have asked the Attorney General’s ministry to have these people, along with others, work so hard preparing this draft bill.

I repeat that Ms Broten has the ear of the Premier. She knows where he is 24 hours a day because she’s his parliamentary assistant; Mr Zimmer similarly with the Attorney General because he’s his parliamentary assistant.

You could try to do it off the record in subcommittee, but I can guarantee you that any report from that subcommittee will be fully debated and discussed on the record, on Hansard. Before we start embarking on requisitioning public monies to hire private lawyers, we should be leaning on the Premier to free up skilled, competent, capable, experienced, talented lawyers in the civil service to give the sort of advice to this committee—we may not like the advice, quite frankly; you takes your chances—that we’re talking about having to pay private sector lawyers to give. We have every bit as much talent in that Ministry of the Attorney General building on Bay Street as the private sector does further south on Bay Street. I want to make that very clear.

Having said that, we’ve seen what these gentlemen have produced. They’ve been very candid with us. They were candid also in telling us what they can’t tell us. What I’m more interested in asking them are the things they say they’re not in a position to respond to at this point in time. I really question how much more value there is in subjecting these gentlemen to further questioning. I’m not going to ask them any further questions.

I want to be able to ask the questions that I want to ask them that they can give me answers to, like, “Why would this committee”—maybe we should be asking Judge McMurtry to come here. The other person who—

Interjection.

Mr Kormos: Well, maybe he has changed his mind since 1981; and maybe Bob Runciman—because, as I say, I don’t think I’ve unfairly described him—could explain to us why this work is being done after his major amendments.

I suppose the other thing I would like is some clarification on this reference to SARS amendments. Runciman was waving the flag still. He was still beating the 9/11 drum when he introduced this stuff. It was part of the reason why we were very critical of him playing that card, the 9/11 card, the terrorism card. The Emergency Management Act amendments were introduced and then debated in the spring of 2003, and unless my age has begun to impact on my memory, SARS was last summer. SARS was the summer of 2003, the summer before the election, when the House wasn’t sitting.

I don’t recall any of the Runciman amendments being referred to as SARS amendments or being perceived as SARS amendments. Runciman, as I say, was banging the patriotic drum about protecting us from Reds, anarchists, Sacco and Vanzetti replayed etc.

Mr Twohig: If I could help you, Mr Kormos, I’m not an expert on the rest of the statute, but if you look at the references to some of the sections, you’ll see that some of the sections appear in 2002. There appears to be two sets of amendments to this statute: one in 2002, the other in 2003.

Mr Kormos: OK. SARS are the 2003 ones?

Mr Twohig: SARS was, in my recollection, in March, April and May of 2003.

Mr Kormos: Yes. The spring of 2003.

Mr Twohig: So some of these amendments predate SARS.

Mr Kormos: The bulk of it, though, as I recall—we’ll have to take a look at this. The answer is clear, once somebody gets it. I remember Runciman’s press conferences; I remember all the spin the government was trying to do. They were in the same position this government is in: trying to generate some positive spin out of a relatively disastrous few years, a pre-election spin. Even though this government isn’t close to a pre-election period, their credibility gap is phenomenal. Thank you.

Mr Zimmer: I just want to be clear about this, for the record: Is it a constitutional convention that counsel to the executive branch not offer advice to the legislative branch?

Mr Twohig: That’s my understanding.

Mr Zimmer: Is it a constitutional convention that legislative counsel, that is, counsel to this committee—or perhaps it’s a question I’ll direct to the legislative counsel. Thank you.

Mr Qadri: One of the things I’ve just noticed with regard to the addition or update from the Emergency Management Act of 1990 and to your current draft bill is

the idea of offences for individuals who fail to comply or who interfere and obstruct. I wanted to just ask—for example, the numbers cited: individuals, \$100,000; up to corporate directors, \$500,000; up to corporations, \$10 million. I just wanted to know some of the thinking and potential application of those. I realize that some of the legislation from other jurisdictions—for example, good old New Brunswick is charging, I think, \$120, and in Newfoundland it's even less. Even in the corporate sector, the maximum designated fine is up to \$10,000. So I was just wondering, what was some of the thinking behind it, and do you see a potential application for that? What was the necessity of basically creating these penalties?

1120

Mr Twohig: As I mentioned before, the issue of enforceability of orders was critical. There has to be an understanding that when an order is made and there's a clear legal authority to it, there is a consequence. The amount of the suggested penalty should bring that home. At the same time, the province has to be careful not to stray into the area of criminal law, which is a federal jurisdiction. So it's an issue of, are these sufficient? Have they gone too far? I can't add to that. It's really just to bring home the enforceability of the order.

Mr Qaadri: Is it correct that those types of penalties are absent from the 1990 legislation?

Mr Twohig: I don't see any reference to them in the current legislation.

Ms Broten: I just wanted to go back, somewhat in response to Mr Kormos's—I guess they weren't really questions, perhaps just a statement that he made on the record—and ask if I could get your understanding. Having listened to your earlier submissions and wanting to get your confirmation on what you were asked to do, in contrast to what this committee is being asked to do, I think that you'd agree with me that what you were asked to do and what this committee's being asked to do are pretty different, in terms of the examination and the analysis in a greater breadth. We're being asked to look at something that you weren't, which is whether there is a need.

Mr Twohig: I would agree with that, without question.

Ms Broten: In looking at your issue, you didn't look at the powers that existed in the other statutes to determine whether we did in fact already have those powers, which is something that we are going to be undertaking.

Mr Twohig: We didn't do that but, as I said, I would be really surprised if you find them stated so broadly in any other statutes.

Ms Broten: I think the most significant difference I see is that we are being asked, if we do come forward with a piece of legislation, that it be a permanent amendment to the Emergency Management Act, which is very different than what you were being asked to put together, which was a temporary, sunsetted piece of legislation that would come in in an emergency and be taken out, and we would then go back to the long-standing Emergency

Management Act that the province has had for many years.

Mr Twohig: Yes, exactly.

Ms Broten: We are also trying to conduct a more broad examination, bringing in lots of deputants and seeking advice from whoever we can seek advice from. That, again, is something very different from the process that you undertook.

Mr Twohig: Critically different, yes.

Ms Broten: If I could just suggest to you, would you agree with me that the information that you've given to us today we should really look at as a piece of evidence, just like everybody else has given us their thoughts on what things we may want to consider as we undertake the task that we've been given, which, again, was very different than yours?

Mr Twohig: To me, it's just another piece. It was a potential response that was ready if consideration needed to be given to it. Again, the context was some very real concern that people had about pandemic flus and SARS and so forth.

Ms Broten: And, I guess, legitimate concerns that professional bureaucracy, professional civil servants would want to look at these issues and be prepared in the eventuality that it was needed?

Mr Twohig: Yes, I would hope so.

Ms Broten: Not very different than much of the work that's undertaken by the individuals in the civil service to help us, to do lots of things that we don't necessarily ever see or know about but they're there just in case?

Mr Twohig: Yes, I would think so.

The Acting Chair: I have no further speakers on the government side. Mr Kormos, anything from the opposition side?

Mr Kormos: Yes. How did you end up at this committee?

Mr Twohig: Sorry?

Mr Kormos: How did you end up here? How did you get here? I'm not talking about whether you took a cab or a bus; how did you get on the list of people participating?

Mr Twohig: I'm not quite sure, but I think my assistant deputy minister asked me to be here today.

Ms Broten: How did you end up here?

Mr Kormos: Sixteen years and running.

Mr Twohig: And I can add that I'm hoping some of the material we've provided about what's happened and what we've seen would be of assistance to the committee. I think it was to amplify that material. I hope that's one of the reasons why.

Mr Kormos: I'm curious, because I don't for the life of me know why Ms Broten wouldn't have been told about the work you've been doing back before we had our first subcommittee meeting. Somebody was keeping her in the dark—the old mushroom treatment. I just find that peculiar, that a PA to the Premier would be kept in the dark like that about the work you're doing. So it was an ADM who set up the attendance here today?

Mr Twohig: Well, that's who asked me to be here, yes.

Mr Kormos: And indicated that your role here was to do what?

Mr Twohig: To explain our work, to present the draft bill as a potential model of something to look at to compare with other considerations.

Mr Kormos: OK. Thank you kindly.

The Acting Chair: If there's nothing further from the committee at this point, as I say, we do have time for leg counsel to make a presentation, and if we determine we need any additional time, we can do that.

Mr Twohig and Mr Boswell, thank you for your time this morning. It was much appreciated and helpful.

Mr Albert Nigro: Good morning. Maybe I'll just get started while the clerk hands out some materials. I want to thank the committee for giving me the opportunity to brief you on legislative drafting and the role of legislative counsel. Judging from the discussion I heard already this morning, I think there's a great deal of appreciation in the room already.

I'm handing out four documents: A Guide to Preparing Drafting Instructions; Private Members' Public Bills; An Introduction to Bills; and Legislative Drafting: Summary. Mostly, I'm going to be referring to that last paper, Legislative Drafting: Summary. I'm going to take you through that slowly, but I am going to refer to the other papers from time to time.

The short paper, the summary paper, is divided into two parts. It provides a summary of the nature of public bills, as we understand them, and describes very briefly the process involved in drafting bills. You've heard a good deal more about that already this morning. The second part explains the role of legislative counsel in the drafting process. I think the committee is probably more interested in the second part of the paper, but in order to appreciate what's in that part of the paper you have to understand some of the basics that are in the first part of the paper.

You'll notice that bills are classified into two broad categories: public bills and private bills. For the difference between the two categories of bills, look at the first page of the short paper called An Introduction to Bills. This paper was prepared by my office as part of the orientation for new MPPs this past fall, so many of you have probably seen this. The main categories are public bills, which in turn are subdivided into government bills, introduced by ministers, and private members' public bills, which we usually call private members' bills. In addition, the other broad category is private bills, which are introduced on the application of a member of the public and relate to private interests as opposed to public interests.

There is a practical difference, I would suggest, between the two classes of public bills. One of the practical differences has been subject to a great deal of discussion this morning, so this is somewhat redundant. I will emphasize that in greater detail, but one of the differences between a public bill introduced by government and a public bill introduced by a private member is the rule on money bills. You can see that's referred to in the

paper called Private Members' Public Bills. Approximately halfway down the paper, under the title, "The money bill rule," there's the reference to standing order 56. That standing order provides that "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown." I'm only referencing that as one of the formal differences. It may make some difference to the work of this committee; I'm not sure.

I'm not aware of any unique rules around committee bills, although, judging from what Mr Kormos said earlier this morning, there may have been a change that my office is not aware of to the standing orders. In any event, private bills are subject to unique rules which I don't think are of any interest to this committee.

Government bills are introduced by a minister and are the product of a great deal of policy and operational scrutiny and approvals, and various legal reviews. The office of legislative counsel doesn't typically get a bill until the policy issues have essentially been worked out, or mostly worked out, and the operational implications have been worked out. You heard that this morning from John Twohig.

1130

That package will be brought to the office of legislative counsel by one or more legal counsel—in this case there probably would have been two—employed by the sponsoring ministry, the Ministry of the Attorney General, who will usually have policy approval documents from the cabinet approval process as well as other detailed documents, which is exactly the kind of research that John Twohig referenced this morning.

Sometimes in the process, especially early on in the process, we may be joined in that by a technical person, an expert of some kind. That person is often a lawyer. He or she may be from the sponsoring ministry. They may be an operational person, they may be a policy person or they may be somebody from a specialized office, often in the constitutional law branch, which was referred to today, or perhaps the policy law branch that the two witnesses earlier today were from.

That's usually what we do and how we go about getting it done from the government's side. I emphasize that it's an iterative process—that is, it goes back and forth—and it can be very resource-intensive when a bill is being drafted.

A private member's public bill, or private member's bill, is technically similar to a government bill except that there are some real, practical differences. One of the obvious practical differences that was talked about already today is that a private member doesn't have the same amount of resources as the government; there's a real disparity in resources. The result of that is that private members' bills tend to be short and usually focus on a particular issue. They don't usually have the same scope as a government bill.

Notwithstanding all of that—and I know I’ve done this—where a private member has come to our office with an idea for a private member’s bill, in order to appropriately address the policy issue that’s being raised in the bill, some research is needed. We will sometimes ask the private member to go and get some research done, using the resources of the legislative library—the office of legislative research services, a member of which we have here—or they can go to caucus research or in some cases they may have contacts with either stakeholders with whom they have been dealing or with some of their constituents. In any event, the drafting will not usually begin on a private member’s bill until that research is done, so we can clarify what the policy is. Having said that, the process is similar—it’s iterative—and we do want policy decisions before the drafting.

A committee bill is something with which I’m not familiar. To my knowledge, there is no unique category. I emphasize that I say, “to my knowledge,” because the clerk may have something to correct me on that, as I thought I heard this morning that the standing orders have been changed. If they have been changed, I’m not aware of it, and I spoke to several people in my office before doing this and they weren’t aware of it either, so we’ll have to look into that.

In any event, I will point out that the motion that referred this topic to the committee is of some assistance. It provides that if the committee adopts the text of a draft bill, the Chair is instructed to introduce the bill as the primary sponsor, in his or her name, with other members of the committee who wish to do so having their names printed on the face of the bill as secondary sponsors. Subject to any comments from the Clerk’s office, if the bill is introduced by the Chair of this committee, by analogy it strikes me that it’s closest to a private member’s bill with multiple sponsors. Again, I’m not sure.

In the result, though, I’d like to emphasize that in the drafting process the features that are common to all public bills are that drafting follows policy decisions, meaningful drafting cannot take place until the details of the goals of the bill are known, and drafting is iterative—it is a process that requires review and refinement as the bill develops.

All of this comes to: What is the role of legislative counsel in this process that I’ve just described? In a nutshell, legislative counsel converts instructions into legislative language, clarifies ambiguities in language or in policy and identifies gaps in policy development or operations in the proposed legislation.

The term “instructions” may require clarification and amplification, at least as it applies to a government bill. Instructions are the materials that are brought to the office of legislative counsel by ministry counsel and include the policy development materials referred to above and any additional materials, such as legal research or the results of consultation with specialist offices that has been undertaken.

On the matter of instructions, my office has prepared a fairly extensive guide to preparing drafting instructions,

which I have distributed to you, and I’d like you to take a look at that, if you could. It’s called “A Guide to Preparing Drafting Instructions.” If you look at the introduction, there is a nice two-paragraph summary.

Giving drafting instructions to legislative counsel about a proposed bill is not just an exercise in preparing an instruction document. It involves a continuing process of collaboration between a ministry’s instructing lawyer and legislative counsel. Many others play a role in this process as well, such as ministry and central agency officials and the French-language professional staff and the editors in the Office of the Legislative Counsel.

It usually begins with written instructions prepared by a ministry’s instructing lawyer. Often, the instructing lawyer meets with legislative counsel to discuss those instructions. As work on preparing a draft progresses, there will almost inevitably be issues to be resolved. This is an integral part of the drafting process.

As noted in the guide, the process is iterative because of its going back and forth between legislative counsel and his or her client. It is in that process that gaps in policy or operations are identified and ambiguities are resolved. By negative implication to what has already been said, legislative counsel is not responsible for policy development, nor is the office resourced to undertake legal research. The area of legal expertise of legislative counsel is limited to legislative drafting. We do not have expertise to offer legal advice in other areas, such as constitutional law or information and privacy matters. However, during the drafting process, legislative counsel will identify legal or policy concerns that may be addressed in order for the bill to be effective and, where appropriate, may suggest needed changes or the need for consultation.

Those are my written comments. Are there any questions?

Mr Zimmer: Just following up on the comment in the document *Legislative Drafting: Summary*, the three-pager. On page 2 under “Committee Bills,” the last sentence in the paragraph reads, “... if a bill is introduced by the Chair of this committee, by analogy it is closest to a private member’s bill but with (potentially) multiple sponsors.” In a private member’s bill scenario, who would the private member look to for legal advice? Obviously not the legislative counsel.

Mr Nigro: As I said earlier, private members’ bills tend to be more limited in scope. They will usually come to my office with an idea, which may or may not be well-developed—it depends—and we may need to ask some questions about it. I’m not sure who they get their ideas from; I think there’s a wide variety. Judging from the discussions I’ve had with private members and their staff over the years, they might get them from constituents; because they have contacts with various stakeholders, they might get the idea from there; or they may have an interest of their own through either professional or other concerns.

Mr Zimmer: Where would they look for legal advice?

Mr Nigro: Insofar as they need legal advice, they'd have to look to their own resources.

Mr Zimmer: In effect, if the closest analogy for this committee is to a private member's bill, this committee should be looking to private advice, much the way a private member would, to carry the analogy to its—

Mr Nigro: If you were to carry the analogy, I would say that would be the logical outcome. I would also point out, if I could anticipate what might be a question, that the office of legislative counsel is uniquely placed within government lawyers in that although, as Mr Twohig indicated, ministry lawyers are to provide advice to the executive of government, the office of legislative counsel has a role under the standing orders to provide advice to the Legislature in respect of matters of drafting.

In many parliamentary jurisdictions—I'm not sure how many offices in Canada—that role is split; it's divided between two offices. But in Ontario I know that we differ from the federal Parliament. We do provide advice to committees and to the Legislature in terms of drafting. In Ottawa, for example, if you were to be drafting motions to amend a bill at a committee, the counsel who would be drafting those motions would be from a different office than the office that drafted the bill in the first place. Here, it's the same office.

Mr Zimmer: You've drawn the analogy between this committee and a private member's bill. A private member would look to the legislative counsel's office for advice regarding the drafting of the legislation. At the broader policy level, the constitutional level and that sort of thing, it would be up to the private member to seek his or her own independent advice.

Mr Nigro: Yes, and sometimes they'll do—

Mr Zimmer: Sorry, but is the answer to that "yes"?

Mr Nigro: Yes, but I would point out that sometimes when those issues come up, I say, "You might want to get some research done," and I will refer them to the resources that are readily available to them. I first knew of Margaret Drent, not through meeting her, but through papers she had prepared for private members in respect of private members' bills that I used in guiding my drafting.

Mr Zimmer: But, essentially, they seek that advice out on their own; they don't get it from you and they don't go to ministry lawyers.

Mr Nigro: To my knowledge, they don't go to ministry lawyers. Sometimes I will suggest that they get advice or get research done.

Mr Zimmer: I just want to be clear about that: It's not from your office, and they're not directed to go to ministry counsel?

Mr Nigro: I would never direct a private member to a ministry office for legal advice.

Mr Zimmer: And, just for the record, again you've drawn the analogy between a private member's bill and a bill that would emanate from this committee.

Mr Nigro: That's correct.

Ms Broten: I understood, quite differently, that when private members put in proposed ideas for legislation and

were working with legislative counsel, it was that office that told them, "You need to be cautious here, because you're seeking powers that don't exist, and there's potentially a charter violation here or there." Am I mistaken in that?

Mr Nigro: I would say that we're talking about things that come up during drafting versus what we would call pure legal advice. For example, if a private member came to me and a charter issue was raised in what they were suggesting to include in legislation, I would, as I would with a government lawyer, suggest there might be a charter problem. What I wouldn't provide advice on is what the result is, what the charter analogy is. That I won't do. To the extent that that might affect the drafting, I will raise it with them. I will raise division of powers issues. We do that all the time. We will raise the issue. Raising the issue isn't providing the advice with the answer.

Ms Broten: OK. Thank you.

The Acting Chair: Anything further from the government? Mr Kormos? Legislative counsel? No? Good. In that case, I guess we stand recessed until 1 pm.

The committee recessed from 1143 to 1305.

RADIATION SAFETY INSTITUTE OF CANADA

The Acting Chair: Sorry, I didn't realize we had a full quorum. I'll call our session back to order.

The first of our deputants this afternoon is Dr Fergal Nolan, from the Radiation Safety Institute of Canada.

For Dr Nolan's and other delegates' information, our committee on justice policy has the responsibility to review emergency management statutes with an eye to whether or not new or amended legislation might be brought forward. This is early on in our process. This is all recorded in verbatim fashion by Hansard for public consumption. If you would take the opportunity to identify yourself to us formally, I'll turn it over to you. We've provided for about half an hour, so if your presentation is 10, 15 or 20 minutes, that will allow a little bit of time for questions from the caucuses that are here.

Dr Fergal Nolan: Thank you very much, Mr Chair. On my left is the chair of the board of governors of the institute, Margaret Rodrigues, and on my right is the vice-president and chief scientist of the institute, Dr Reza Moridi. My name is Fergal Nolan. I'm the president and chief executive officer.

The Radiation Safety Institute of Canada will be 25 years old next year. It was founded as the result of a disaster in Elliot Lake as an independent national organization dealing exclusively with issues of radiation safety. The UN tells me that it is the world's only independent organization dealing with radiation safety issues.

What I have to say to you today is that I don't want to alarm people or be alarmist in any way. That is not our philosophy. Our philosophy is, "Good science in plain language." We like to get things done with our feet on the ground, and we believe that problems can be resolved

in that way. Let me get to the unpleasant parts first: the news.

Two days ago in the United Kingdom, eight people were charged with conspiracy to commit terrorist acts using radioactive materials, chemical agents and biological agents. They had in their possession maps of Manhattan designating the office of the IMF, the World Bank and, in New Jersey, Citicorp.

The second news item was a large article from the New York Times last Sunday on US government concerns about nuclear reactors—small nuclear reactors about the size of a bar fridge—on university campuses, many of which are using weapons-grade uranium. The operators of those are students paid \$10.50 an hour, and that was a recent wage increase.

The third item I want to mention is a general understanding among the scientific community dealing with radiation safety in the United States that one radioactive source is lost in the United States every day. These are not from nuclear power plants but from industrial operations, hospitals, oil operations, mines, laboratories and all sorts of things like that. The term for such sources is “orphan sources.” That means radioactive material without a parent; the technical community calls them radiation sources.

Let me also remind you of three scenarios that, as a committee concerned with emergency preparedness, you may already have heard of, but let me remind you anyway. The first is a traditional scenario. This has grown since the fall of the Berlin Wall and the fall of the Soviet Union at the end of the 1980s and was of much concern during the early 1990s. This is the concern about a suitcase nuclear weapon being brought into, for example, New York harbour on a container ship and exploded. This is a real concern and still is a concern. You may have seen Baltimore blown up by one of these things in a recent movie produced in the United States.

One or more weapons—nuclear warheads—is said to be unaccounted for from the Soviet arsenal. That’s disquieting. We also have concerns at the International Atomic Energy Agency about weapons-grade material that is being smuggled across borders—every so often you hear of smugglers being caught—and the potential sale to terrorists. That’s one scenario: bombs or material for nuclear bombs.

The second scenario is a more recent development, and that concerns what is now called a dirty bomb. Two scenarios have been worked out. You have seen on PBS and other stations—TV Ontario may have run it; I’m not sure—a scenario run by Cambridge university, theoretically of course, in London’s Piccadilly Circus where plastic explosive is put together with radioactive material—cesium powder, in this case—and then exploded. The van blows up—the plastic explosive blows up. You do not have a nuclear explosion, but what you do have is a cloud of very fine dust of radioactive material that moves at a steady rate across the city, dropping fine radioactive material onto buildings, sidewalks, into the crevices of windowsills, everywhere—on people too, of

course—contaminating a large area. So it’s environmental contamination.

What happens? Well, the first thing that is of greatest concern is public panic, and the second thing is that parts of the city, because of this public concern, may simply be abandoned.

A similar scenario was done for Washington on the Washington subway system. Here again it was plastic explosive and cesium—an explosion in one of the tunnels. The people doing it—this is a theoretical thing—would rely on the suction power of trains passing through the tunnel to spread this fine radioactive dust throughout the tunnel, to come out and go all over the city as much as possible.

What would that do? Again, you have environmental contamination. Again, you have the possibility of public panic and the abandonment of some parts of the city—not a very pleasant thing.

There’s a third scenario that has not yet been considered, which is what I call the Radiation Safety Institute scenario. The other two involve bombs or explosions of some kind; this does not. Let me put it to you this way: Suppose a graduate student working in one of our labs in one of the universities is not feeling well in some way or is angry with somebody or has political intentions and takes some radioactive material from the lab he’s working in. He goes down to the Eaton Centre, drops a little bit here, a little bit there, a little bit somewhere else; goes on to the TTC and drops a little on the subways here, there and elsewhere; and on to the TTC buses. He then calls 911 and says, “I am organization such-and-such. Here’s what we have done”—it’s always “we.” “We have put radioactive material all over the city and all over the transportation system and all over the Eaton Centre. Here are three places where you can go to see that we are telling the truth.”

What do you think would happen in this city? I think it’s easy to conceive that people, who are worried anyway about radiation, radioactive materials and all of these things, would quickly jam up the city and the city would come to a standstill. We saw what happened on 9/11. The towers in this city, which were untouched, emptied and the city evacuated, basically went home.

Not to be alarmist, these are scenarios. They are scenarios that concern us. The second one concerns us quite a lot, and let me put it this way: Emergency measures and preparations for emergencies, specifically nuclear emergencies, are traditionally focused on nuclear power stations. We have one of the largest nuclear industries in the world in Ontario. Now, nuclear power stations do not figure in any of the scenarios I have just outlined for you. They have nothing to do with any of these scenarios.

Then let me put to you this question: Why is the federal regulator, the Canadian Nuclear Safety Commission, at present planning to conduct nuclear safety audits at 40 universities across this country this year? I don’t know how they can do it. It’s almost at the rate of one a week. But there is a lot of concern.

I'm not going to leave you there with these awful kinds of scenarios. Let's talk about a context. The question would arise: Where would people get these radioactive materials? How would they get their hands on this stuff? We're not a nuclear weapons country. Nuclear weapons development is outlawed in this country.

There's another reality in this country which almost nobody is aware of, and that is the reality of the workplace in Ontario and every other workplace across this country. The law in Canada for the last 50 or 60 years has said that everybody exposed to radiation in the workplace must be monitored. You see these little badges. Most of them wear what are called gamma badges or dosimeters. They must be monitored. Why is that? Because the law has established an annual limit for radiation exposure of a worker and also a lifetime limit. In other words, if you're a nurse in a hospital and you reach the lifetime limit, that's it for working in any sort of radiation specialty area that could involve exposure to radiation, including X-rays.

So to set the limits, monitoring is required, and all that reading is recorded in a big book held by Health Canada in Ottawa called the National Dose Registry.

How many people are on that National Dose Registry as having been monitored to date? About 600,000 individuals known by name and number since the beginning. However, that doesn't tell you the number each year. The number each year is growing steadily. Last year, in round numbers, it was about 135,000 people monitored daily for exposure to radiation.

Where do all these people work? When people wrinkle their nose and frown and worry about cancer when they think of radiation, and not without reason, and you ask them, "Where would you get exposure to radiation?" they'll tell you nuclear power plants, uranium mines and mills and your dental X-ray. People usually tell you your dental X-ray.

That's not bad, but they don't tell you about all the other things because they don't know about them. In fact, only 10% of all the workers monitored in Canada have anything whatsoever to do with the nuclear energy industry. That includes nuclear power stations in Ontario, Quebec and New Brunswick; nuclear research facilities, for example, Chalk River; all the uranium mines operating in Saskatchewan. Only 10% of that 135,000 comes from that whole nuclear energy source; 90% work in general industry and services. Of that 90%, some 50% work in general industry and service sectors, in industries of every possible scope, everything you can think of, and 40% work in health care. That accounts for the 90%.

Where do they work? They work in almost every area of heavy industry including manufacturing, mining and processing; they work in education, including universities and colleges, even in high schools and museums; in health care, in hospitals, clinics and research centres; in agriculture, in animal care and food processing; in the airline and trucking industries; in the construction industry; in the conventional electricity sector, in coal-fired plants, oil-fired plants, gas-fired plants, with big radiation

warning signs in those; in the petroleum industry, including production, transportation, refining and storage; and of course, in Ontario's nuclear energy industry, but, as you know, this is only 10%.

1320

Let me give some examples. An Ontario winery bottling plant uses powerful radiation sources to measure liquid levels in its wine bottles. They don't want to give more wine to some and less wine to others. They're very accurate. Police bomb squads, portable X-ray machines, corporate mailrooms, and X-ray machines are now used to check the security of incoming mail. Ontario universities use radioactive materials extensively in liquid, solid and gaseous form in hundreds—and I mean hundreds—of student teaching and research laboratories and in research centres right across the province. Ontario airports are all using X-ray machines and increasing their use.

Hospitals use radioactive materials—not the machines—extensively for diagnostic and therapeutic purposes; in diagnostic purposes for thyroid, for example. People will do that and then they go into nuclear power plants, and on the way out, they're radiating from this diagnostic procedure and they set off the alarms. It happens quite frequently at Ontario's nuclear power plants and also in New Brunswick. For therapeutic purposes, they use very powerful sources for radiation treatments, and they're also large users of X-ray machines.

They've been introducing new kinds of X-ray and laser technologies into operating rooms. These kinds of technologies caused a big fight two years ago at a UN conference in Geneva over the use of new technologies in operating rooms and the radiation exposure that staff was getting from the use of these new technologies. That's a matter of considerable concern.

Computer chip manufacturers use laser technologies, and so do manufacturers and suppliers of novelties, to etch novelty items. Soft drink bottling plants and beer plants use, again, multiple X-ray machines in their plants—two or more per line—for controlling liquid levels.

Steel plants, oil refineries, glass and rubber manufacturers use powerful radiation sources to measure flows and levels in their industrial operations. Dr Harry Aitken, formerly of the Ministry of Labour, once told me that if you stood in front of one these sources—they are shields in, say, a steel plant, which they use to make sure you have the same thickness of rolling steel; you don't want bumps in the steel, so this is a very good tool—you could be dead of radiation sickness in a week if you got exposed to that.

Ontario's sewage treatment plants, of all places, use powerful radiation sources to measure and control the density of sewage sludge. Ontario road builders and construction companies use powerful radiation sources to check the density of poured concrete and other material. Those are just some of the uses. It goes on and on.

There are health and safety implications for that. Our concern primarily, as an institute, is workplace health and

safety, but this workplace reality has a bearing on public health and safety, public security and on preparations for emergencies.

Let me skip to a point here about jurisdiction. Jurisdiction in the field of radiation safety is divided between the federal government and provincial governments and territories. Now it's sort of a common assumption to say, "Oh, if it's radiation, it must be federal. That's the federal guys. They can handle it." That ain't true and it's increasingly less true, because the newer technologies coming in are all under provincial regulation. X-ray technologies, laser technologies and these other kinds are all under provincial regulation in Ontario and other provinces.

In Ontario we have an odd duck situation about jurisdiction, which is the area you're examining. The Ministry of Labour looks after health and safety in the workplace, including radiation safety in the workplace. The Ministry of Health, under another act of the Legislature called the HARP Act, looks after patient safety. Patient safety means to prevent overexposure to patients who are being subject to X-rays and that sort of thing in medical care. It does not attend to the workplace safety of nurses or other workers. That's the Ministry of Labour's job.

Let me give you some numbers. It's often good to try and just get a real handle, away from the abstractions, by looking at what's actually out there. We've looked. The Ministry of Labour regulates the use of X-ray machines, but radioactive materials are federal. X-ray machines and lasers are provincial. The X-ray machines in industry and the X-ray machines used in animal care, veterinary operations, all come under the direct jurisdiction of the Ministry of Labour.

There are 1,400 X-ray machines out there in Ontario industries all across the province; 1,400 X-ray machines are out there in industry alone. There are 1,200 X-ray machines and about the same number of vets all across Ontario. That makes a total of 2,600 X-ray machines under the regulation of the Ministry of Labour. How many inspectors keep an eye on all of that? Four inspectors.

In the health sector, the Ministry of Health also looks after X-ray machines. How many machines? Well, here it's a bit of a strange story. I have to say, the civil servants in both cases, the Ministry of Labour and the Ministry of Health, were very good. They've been very co-operative. But they're working with very difficult circumstances that, in our view, they should not have to work with, particularly in the Ministry of Health.

When we first asked the question in 2001, the Ministry of Health said, "Well, we're not sure, but we figure we have about 4,000 X-ray machines." The X-ray inspection service of the Ministry of Health is in charge of about 4,000 X-ray machines. We thought that was very strange. We asked BC, and they said, "we have 6,248 and a half." It was almost that precise.

So we went back to Ontario two years later, and we asked them again. They said, "Yes, it's a good question. But it's very difficult, so let's try it again." So they said,

"About 20,000." That's a lot different from 4,000. The X-ray inspection service estimated about 20,000 machines.

It still didn't seem right to us. We've been across the country. So this year we had a good, long discussion. They really did the best they could, and we found out what the problem was. The first thing is, the people who have these X-ray machines in the health care sector are required to register them with the Ministry of Health. The Ministry of Health's computer system for registering these is so out of date it should go on the Antiques Roadshow. It is a DOS machine that simply won't answer the questions you ask it because it wasn't designed to do so, so most of the registrations are in paper files. We went through it all very carefully, and they were very helpful.

Now, you have two components: dental—the dentists—and the medical and the hospitals and all of that. We came up with these numbers. For the dentists, there are about 20,800 X-ray machines across Ontario in dental operations. Then we looked at the medical places. In the medical hospitals, clinics and all of that, there are about 22,500 machines. We now have, in 2004, under the regulation of the Ministry of Health, 43,300 X-ray machines. That's quite a difference from three years ago, when we had 4,000. It's 10 times the number. That's their best guess.

Do you know how many inspectors have the job of making sure that these machines are working properly and patients are not overexposed to radiation from these machines? Because the doctors don't know anything about radiation; they just look at the images. Four inspectors.

Now let's go back to the Ministry of Labour. Under occupational health and safety regulations, their four inspectors are supposed to look at the situation in all the hospitals where all these machines are going as well, because that's an occupational health and safety issue. It's not a patient issue, so the Ministry of Health inspectors don't do that. So now we have four Ministry of Labour inspectors dealing with their 2,600 machines and also with 43,300 other machines in the health care sector. It's an impossible situation.

1330

I should mention, by the way, that Ontario is the world's largest producer of medical radioactive material, at 60% of the world's supply.

Now, what are our concerns? There are three major concerns, and then I'll suggest what should be done.

First is the radiation exposure of workers. This institute was founded because of the terrible disaster in the uranium industry in Ontario and the deaths of over 200, and counting, uranium miners from lung cancer due to that exposure. The Ontario occupational health and safety regulations dealing with radiation safety, I have to tell you, are 14 years out of date; they are antiquated. They are not up to par with the international guidelines, and they are not up to par with the national guidelines for this country.

What does that mean? That means that if your husband is working at the nuclear power plant at

Pickering, for example, he is allowed to get 20 units—we just call it “units”—of radiation exposure per year. But if his wife is working in an Ontario hospital that is not federally regulated, under Ontario’s regulations she is permitted to get 50 units of radiation exposure per year. These regulations have been out of whack with international standards for over 14 years. This means that she would be allowed to get, by the Ontario legislation, two and a half times as much radiation exposure as her husband under a federally regulated nuclear power plant. I don’t think that’s really acceptable, but that’s the way it is.

The Acting Chair: Dr Nolan, you have about five more minutes, so you’ll have to focus on your key issues.

Dr Nolan: I will.

The second point is the security of radioactive materials at universities, medical and research centres. That’s of great concern to us, as the scenario outlined suggests.

The third point is dealing with public panic, the lack of a systematic approach to responding to the information needs of the public, what are called the “worried well,” in the case of a nuclear emergency resulting from one of those scenarios; not just from a nuclear power plant, but from one of these other scenarios: What’s to be done?

Security, emergency measures, emergency services—there has to be a refocus. People have got to stop thinking about only nuclear power plants and look at what the reality is out there in the workplace and the accessibility of radioactive materials to the general population.

The adequacy of regulations: The Ministry of Labour needs to update the occupational health and safety regulations as an urgent matter. The Ministry of Health needs to review the administration of the HARP Act, because at present we hardly think it’s effective.

The other point in dealing with those two ministries is that both of them are registering X-ray machines, both of their databases are out of date—in the Ministry of Labour it’s about 10 years out of date—and there should be a joint registration of machines in the whole province. It should be centralized. It’s a machine; you register it so that everybody knows where it is and everybody knows where to go.

The final point is, again, to review the whole approach to public education in emergencies, to make sure that the information being given comes from a credible, trustworthy source, from people who know what they’re talking about. I’m sorry to take—there was a lot to get through.

The Acting Chair: That’s great. Thank you. Although we’re getting close to our half hour, our schedule this afternoon has a bit of flexibility. Can I suggest to the committee that we provide 10 minutes to each of the caucuses, and should there be more time, by unanimous consent, beyond that? Mr Kormos.

Mr Kormos: Agreed. Thank you, Chair, because this is a shocking revelation.

Having listened to you, you’re speaking of thousands of workers in medical settings for whom the acceptable

level is two and a half times a counterpart in a nuclear power plant. I’m reading the material you provided in your package about radioactive exposure as a carcinogen, among other things. So you’re talking about, in the province of Ontario, the prospect of slowly maiming and poisoning thousands of workers in our medical workplaces because of the grossly outdated exposure standard.

Dr Nolan: I wouldn’t use the colourful language you’ve used, but the concern is certainly as great as your own. We saw what happened before in Ontario by inattention and neglect, and that was insufferable and need not have happened. This was in the uranium industry.

There is a risk. Not everybody who is exposed to radiation will contract cancer of one kind or another, but there is no doubt about it that a certain percentage of those will do so. If the international community and the scientific world—the ICRP and all the best advice that the UN and countries were given, including Canada—says the exposure level should be reduced to what I tell you is now in play—in other provinces, in the uranium industry in Saskatchewan, for example; in federal institutions; at nuclear power plants—absolutely, there is no rational basis for maintaining the present position. It’s putting people needlessly at risk.

Mr Kormos: And how does the nuclear power plant standard, the federal standard, synchronize or fit with the best-informed standard?

Dr Nolan: It is my understanding that the nuclear power plants in Ontario, under the new Nuclear Safety and Control Act, which was passed by Parliament and went into operation in 2000, are conforming to the best standards in the world. There’s no question about that.

Mr Kormos: I appreciate you wanting to avoid alarmist language and cautioning me that not everybody who is overexposed to radioactivity is going to get cancer, but then again, not everybody who smokes is going to get cancer. But you are telling me that exposure to radioactive output is a carcinogen?

Dr Nolan: Yes.

M Kormos: Undisputed?

Dr Nolan: Yes.

Mr Kormos: And the standard that’s applied with the federal nuclear power plant standard—you spoke of 20 units, to avoid drowning us in hypertechnical language. Is that 20-unit standard considered a 99% safe standard or a 100% safe standard? I hope you understand what I’m asking when I say that.

Dr Nolan: Oh, yes, I think so.

Dr Reza Moridi: My name is Dr Reza Moridi. I am the chief scientist and vice-president for the Radiation Safety Institute.

Exposure to radiation carries a risk. That’s the scientifically known fact. Most scientists believe that exposure to radiation carries risk. The more exposure, the more risk.

The international standards are 20 units of radiation exposure per year, on average, which is the Canadian federal government’s regulation for people who work, for example, in nuclear power reactors or the nuclear in-

dustry. It carries a certain risk. If you are exposed to that amount of radiation, your risk wouldn't be higher than any other accepted risk in industry because in every industry, everybody carries a risk. The idea behind this number is that if you are a radiation worker, your risk shouldn't be more than the risk of any other worker. So in every industry, acceptable risk is set at a limit. Based on that, the radiation exposure limits are set.

Mr Kormos: You're one of the course instructors with the Radiation Safety Institute, in the school that they operate?

Dr Moridi: Yes, I am.

1340

Mr Kormos: I want to talk about these four Ministry of Labour inspectors inspecting 43,000-plus medical-setting machines, not from the perspective of health but from the perspective of the health and safety of the worker, and an additional 2,600 in non-medical settings—

Mr Zimmer: Point of order, Mr Chair: Isn't the issue that Mr Kormos is exploring and indeed the issue, for the most part, that the witness raised, not a matter of the emergency measures that we're looking into but really matters of occupational health and safety in the ongoing workplace and not at—

Mr Kormos: I understand what you're trying to do, Mr Zimmer, but please.

The Acting Chair: I think individuals may look at it differently. In the context of the time available and the broad nature of emergency planning, I think it's appropriate for Mr Kormos to continue with his question and get a response in the few minutes he has available.

Mr Kormos: Thank you kindly, Chair. I find this shocking news that our sisters and brothers in workplaces are being exposed to carcinogenic levels of radiation approved, endorsed, condoned, with the seal of approval of the government.

I want to talk about these four inspectors in the Ministry of Labour. When they inspect machinery, what are they doing? Are they testing? For instance, I'm concerned that a worker may self-monitor in terms of recording the number of occasions they are present at a particular X-ray process and use that to calculate the level of exposure. But if the machine is not being properly tested, it could be like the faulty microwave, right? So in fact even their own self-reporting and budgeting of their time with the machine could be making them exposed to even more than the two and a half times the federal level, because the machine, for instance, is not working properly and is emitting more radioactivity than it should. Is that a fair observation?

Dr Moridi: On the first point, the exposure limit, which we said in Ontario is two and a half times more than the exposure limit of the federal government, this doesn't mean that every worker is getting that much radiation. That's just the exposure limit by regulation.

Mr Kormos: I understand.

Dr Moridi: Then there is another rule in radiation protection which is followed in federal regulations and

also in provincial regulations, which states, "as low as reasonably achievable." So we have to distinguish between these two points, that these are the limits; it doesn't mean you will be getting that much.

Mr Kormos: What is the failure to inspect doing to our workers?

Dr Moridi: When the inspectors inspect the workplace, they are supposed to be basically looking into the regulations and seeing whether the owner and operator of an X-ray machine, for example, is following regulations. One of those would be emissions from the machines, another point would be the level of education and training of workers, and there are various other points in the regulations. I assume that when the inspectors enter a premises, they would be interested to see whether the owner and operator of the machine follows the regulations.

Mr Kormos: So the failure to inspect is not only exposing workers to serious health risk that isn't necessary, but also has a potentially lethal impact—lethal, deadly.

Dr Moridi: It could be, yes. If a machine is not operating properly, it may expose people to high levels of radiation.

Mr Kormos: I think one of the recommendations of this committee to the House is obvious. This is, again, shocking news. I'm so pleased that you folks came today. This is alarming, and the most drastic response is required, in my view. I trust that the parliamentary assistants present will report back to their ministries and call upon their ministers to initiate remedial action promptly.

I suppose, then, there is a prospect of litigation. The province is exposing itself to litigation, it having been advised, it knowing that its standard of exposure is out of sync with the rest of the world with best practices. I suppose there could well be, from the government's perspective, a high risk of being held liable or culpable for knowingly exposing workers to deadly levels of radiation.

Dr Nolan: We're not expert on the litigation side of things.

Mr Kormos: I just threw that in as an observation.

Dr Nolan: It would be. If I may just come to the other point, there are two components, and Mr Zimmer—

The Acting Chair: Sorry, before you do that, I'm going to bring closure to that question, in essence, and move, then, to the government side. Mr Zimmer did have a question on my list.

Mr Kormos: Thank you, Chair. Very skilful.

Mr Zimmer: I don't have any questions. I just point out that we are into an examination of occupational health and safety issues, not emergency measures issues.

The Acting Chair: Mrs Sandals?

Mrs Sandals: If Ms Broten wants to lead, I'll follow up, if I may.

Ms Broten: Thank you very much for being here today. You've certainly raised some very important issues with us, likely, in some measure, beyond the scope of what we are examining in this committee. We're very much looking at the powers of the state and whether the

statutes are appropriate in terms of emergency management in the province during a declared emergency. But I can certainly tell you that we take very seriously what you've indicated to us today and will ensure that the material you've provided and the transcript of your evidence today will make it to the appropriate minister, so that we can take a look at these issues and ensure the safety of our workers in the province, ensure the safety of our patients as well as those elsewhere.

Certainly, we depend on and have heard a lot from front-line medical folks over the last number of weeks, and making sure they are safe and healthy when we need them is very important. So thank you very much for raising that issue.

I want, if I could, to direct you perhaps to a query that prompted us to want you to come and testify today, which was that we had some indication, perhaps not as knowledgeable as you have been, about the number of sites that this type of material could be obtained from, in terms of a provincially declared emergency. I wonder if you have any thoughts or suggestions you'd like to make to this committee as to the powers a province might need to anticipate, manage and prevent some of the scenarios you've described.

Dr Nolan: Yes, it's a good point. There are two points to consider, I think. One is for information purposes. You can't use an X-ray machine as a bomb or a terrorist thing. You switch it on, and you switch it off—you need electricity. So we're talking now about radioactive materials licensed by the Canadian Nuclear Safety Commission. The Canadian Nuclear Safety Commission, I think, can provide the committee with a list of all the licensed companies, and they are supposed to know where these things are. They've also become much more stringent and quite tough about renewing licences. It's really quite impressive what the Canadian Nuclear Safety Commission has done in the last two years.

I think it would be very important for emergency preparedness people—fire people, police—to know where these things are if they've got to go in somewhere. They should be able to have those lists and that information available. It is there. It is stored in Ottawa at the Canadian Nuclear Safety Commission.

The second thing is that training is so important. I believe the OPP emergency task force came us to and we trained them for a week in very comprehensive training, with two radiation scientists, Dr Moridi being one of them, leading the group. We've also been called in to train—we've just done it—the federal board of security people on radiation, because of the heightened awareness of radiation exposure to them in their jobs and also because they're looking for the stuff. They think they may have to deal with some of these emergency measures.

I am not sure that very many emergency measures people have even the fundamentals of radiation safety training, and I think that should be attended to. There are basic, fundamental things so that they don't get worried or overly concerned themselves, that they don't panic in

front of something. Our position is, and we have demonstrated repeatedly, that if you know what you're doing, you can do it well. You can get the job done and keep everybody else safe as well. That's very important.

The third is crucial in emergency measures: We've got to think about public worry. The worry about anything related to radiation is far in excess of almost any other thing you can imagine. Just try saying to people, "Have you looked in your smoke detector? There's a radiation source in there. The kind of radiation it's giving off is the same stuff that killed uranium miners in Elliot Lake." They get panicked and want to rip the thing right out of the ceiling.

1350

Well, it isn't true. If they knew a little bit about it, they'd know that a piece of paper could shield them from that radiation. That's why it's so easy to have in smoke detectors, because it doesn't travel more than that distance in air. It loses its energy. It's harmless.

Little things like that give people confidence, so that they know what they're doing. That's what we've found. That's why we call it "good science in plain language," so that people can understand and be able to make up their own minds and then act in an informed way.

Ms Broten: Are there other jurisdictions that are doing a better job with education, the last aspect you raised?

Dr Nolan: This is probably the weakest in any country. We educated the community of Bancroft, for example—over five million tonnes of radioactive waste. The waste is still there, and now they know what they're dealing with. The president of the old AECB at that time, Dr Lévesque, said there's no question that the Radiation Safety Institute has credibility on these issues with the public. We've been able to go into power plants—Pickering and Darlington—and we've been able to do radioactive waste sites, school boards, various places, also at Camp Borden in Barrie, where the families were very worried about something. Educate them. Give them the power and knowledge of education, and then they're able to deal with it, as they would any other hazard.

Mrs Sandals: I'd like to briefly talk about the whole issue around collection of information and who has access to that information. I think you indicated that the Canadian Nuclear Safety Commission is doing a reasonable job of collecting information about the sources of radioactive materials, so they have that information. You expressed a particular concern around research labs in universities. For example, we happen to have sitting here the chief of the Peterborough fire department, who has a university in his jurisdiction. Does he have any authority to have automatic right of access to the information about what nuclear materials are present on the campus within his jurisdiction?

Dr Nolan: The plain answer to that is, I don't know. I can tell you something, and Dr Moridi can help me out as well. We're quite familiar with universities. We've been called in to two major Ontario universities to deal with situations. One was the University of Toronto, in relation

to exposure of the public from the dismantling of their old Slowpoke reactor, and the other was the University of Guelph, which is delighted with what we did. We sent a team in there and redid all of it.

The way it works is: At a university the size of Guelph, which is a very impressive place, about 15,000 students—

Mrs Sandals: Thank you for that. I happen to be the MPP for Guelph-Wellington.

Dr Nolan: Actually, I had forgotten. While we were going up and down there, I remember seeing your signs were all over the place trying to get elected. So congratulations on your election.

In any case, the University of Guelph, which has no medical faculty, no big prestigious faculties, has the veterinary faculty, and John Kenneth Galbraith as a graduate. It has \$100 million a year in research grants—a university of 15,000 people. That's extraordinary and a great compliment to them. They also have 100 laboratories using radioactive materials—a medium-sized university—100 of them.

At the University of Toronto, I think it's estimated at about 600 laboratories. A few years ago, just when the Canadian Nuclear Safety Commission got going, the University Health Network had their licence yanked, suspended, for 600 or 700 laboratories—all the medical teaching places. I was astonished that the Canadian Nuclear Safety Commission had the guts to do it. They took it away, yanked the materials away from people and said, "You can't do it; you can't use the materials." It caused a lot of difficulty at the University Health Network. About 1,000 researchers were delayed in their work.

I was impressed, so I called them up. They said, "Well, we had no choice. We'd been warning them for years, and then they lost their radiation safety officer." I said, "One radiation safety officer? For that huge medical research place and all those laboratories, they had one radiation safety officer?" They said, "Yes, and they lost it, so we had to yank the licence." Now, things have gotten a lot sharper at the University Health Network since, but that shows you what can happen.

Generally, to use radioactive materials in any process, whether it's in industry or anything in research, you have to get a licence from the Canadian Nuclear Safety Commission. Under the new laws, you have to send a whole ream of documentation. It's very time-consuming. We've helped some people do it.

The Acting Chair: Dr Nolan, could you bring this to a close very quickly?

Dr Nolan: Right. Universities are given one licence. They become a sort of on-site mini-Canadian Nuclear Safety Commission. They, in turn, issue permits to all the labs, and they have to follow all the rules. The problem is, universities are very untidy places, by definition and by nature, and it's been quite difficult for them to figure out how to stop people from wandering around from lab to lab with bits and pieces of radioactive material. But that's much the situation. I'm not sure if I've addressed the question or got off track.

Mrs Sandals: We'll find out from our Net witness whether he gets the information.

The Acting Chair: Thank you, Dr Nolan, and to your associate and the chair of your board of governors, for accepting our invitation to come as a witness to these hearings. I think it's particularly informative and helpful to hear your comments, particularly in regard to public reaction to radiation-related activity as opposed to something like the power going out, where people can kind of see what's happening, or not happening, as the case might be. The unknown is often quite scary.

CITY OF PETERBOROUGH

The Acting Chair: From the city of Peterborough, we have Lee Grant, the fire chief. I'm not sure if he's being joined by anyone this afternoon. Thank you for your patience. We're having some broad-ranging discussion on emergency management and emergency planning. We have set aside some time for a presentation by you and then questions by the members to help us in our preliminary deliberations in preparation for either amendments or new legislation.

This is all being recorded verbatim in Hansard, so if you would formally identify yourself, I'll turn the floor over to you.

Mr Lee Grant: I'm Lee Grant, fire chief of the city of Peterborough. I didn't mind waiting at all. I can actually use the rest, thank you.

The Acting Chair: You've had a very full few weeks in the city of Peterborough.

Mr Grant: Yes, we have.

I did bring a PowerPoint presentation, but due to limitations, I've had it printed so you can refer to it. The smaller document is actually the text of my presentation, which may be more convenient for you to refer to at a later date. I have also provided a CD-ROM to the clerk. If there is an interest in actually viewing the colour presentation, by all means, you're welcome to use it. It does have some interesting flood pictures that don't show up too badly in black and white.

Before I start my presentation on changes needed to the Emergency Management Act as identified during our recent flood disaster, I need to thank the province of Ontario on behalf of Mayor Sutherland, city council and the citizens of Peterborough for the extraordinary support provided to our community at our time of need. The timely and expert response to our community by many provincial agency staff and the expedient way in which financial assistance was provided to our citizens clearly demonstrate that the new Emergency Management Act and processes have already had a very positive effect on the way emergencies are dealt with in Ontario.

The city of Peterborough is a community of roughly 74,000, encompassing an area of 54 square kilometres along the banks of the Otonabee River. We have a full-time staff of approximately 710. Our emergency response capability is made up of 152 police—that is not all police officers; it includes the civilian contingent—and 95 fire-

fighting personnel, 84 of whom are directly on the vehicles.

On July 15 this year, the city of Peterborough experienced a record average 175 millimetres of rain over the city. It was noted that during the hour between 3:30 am and 4:30 am, rainfall of 78.8 millimetres was registered. At 4:50 am, a report of a roof collapse was received from the Extendicare nursing home. Upon arrival, it was evident that residents would have to be evacuated. The evacuation took almost five hours, through water up to four feet deep, and relocated 171 long-term-care residents to the Evinrude Centre—one of our major hockey arenas—without incident. The success of this evacuation was the result of a sound, practised plan and all parties working together in a time of crisis to make it happen. The team comprised social services, the Peterborough fire department, transit, our Evinrude Centre staff and, of course, the Extendicare staff, who were crucial in making it happen.

1400

A couple of pictures: That's looking down one of our main streets. The next one is beside one of the locks in Peterborough. With the home that's right up against the river, you can tell there is no difference between the person's front yard and the river at this point.

As part of the cleanup effort, we moved 12,500 metric tonnes of people's belongings and components of their homes to our landfill site between July 16 and 27. Our normal intake at that facility, which includes the county of Peterborough as well, would be in the neighbourhood of 3,000. Some 503 volunteers over 12 days put in about 8,400 person-hours, helping us pump basements, strip and clean the houses and clear the city streets. We had to remove hydro meters from more than 500 homes because of flooded basements, and 56 of our staff were re-deployed in the city to a public information group that provided 1,453 man-hours to deal with almost 13,000 public inquiry calls during that two-week period.

The emergency response to the flood event, which started at 2:30 on July 15, is continuing today as I speak to you. While the water has receded, the community is just now coming to grips with the reality of the magnitude of the personal impact this flood has had on members of the community. Basements and first floors that were flooded are now covered with mould, most belongings have been loaded into dump trucks and taken to landfill, the exteriors of homes are washed out, landscaping destroyed, streets and sidewalks damaged and many vehicles written off.

The visits of Premier McGuinty, Ministers Kwinter and Gerretsen, and the ongoing efforts of MPP Jeff Leal and MP Peter Adams have been a great morale boost to our citizens and we thank you, one and all, for your kind thoughts.

People in our community are literally terrified when the rain starts, as it has almost every day since the flood. Our response to this event has brought to light a number of issues that would have made our job easier.

Before I get to those recommendations, I must also recognize the efforts of Dr Jim Young, who visited

Peterborough on day two of the flood and helped the emergency operations teams deal with several issues that were key in speeding the recovery effort.

In the interest of time, the remainder of my presentation will be in point form detailing specific issues which the emergency operations team believes need to be addressed to help communities deal with future emergencies. I am hoping this will allow ample time for questions, which I am sure many of you will have. These recommendations are in no particular order with respect to their priority; however, the emergency operations teams view all as important.

First of all, WSIB coverage should be extended to all volunteers involved in community response throughout both the emergency and the recovery operation. This would allow ongoing use of volunteers throughout the recovery phase with minimal risk to the community.

The act should provide some form of automatic funding for resources provided directly as a result of the declaration of emergency. This would allow communities to call in resources immediately when required, without going through a long process to determine if the province will pay for the expenses.

The act requires a provision that would make overtime for municipal employees mandatory during a declared emergency. While 90% of employees rose to the occasion, a few refused, which became a very demoralizing situation, and in some cases resulted in key people not being available at critical times.

The act requires a provision to cover immediate recovery costs such as electrical inspections, electrical meter replacements, depreciation costs of rental equipment and the service work required to restore basic necessities like electricity, heat and hot water to allow safe and secure occupancy of a residence. This type of immediate funding would have substantially decreased the size of the evacuation centre operation required during this event and would allow people to go home, which is where they want to be.

The protection from personal liability section of the act should be amended to say, "No action or other proceeding lies or shall be instituted against a member of council, an employee of a municipality or any employee from another municipality assisting with the disaster, a minister of the crown or a crown employee for doing any act or neglecting to do any act in good faith in the implementation or intended implementation of an emergency management program or an emergency plan or in connection with an emergency."

The key issue here is coverage for other municipal employees that come to help you, because we had literally hundreds of them. They were very much afraid they were standing on their own, in many cases.

We need a provision which allows for the municipality to take action on private property to protect the safety and security of citizens and assign costs not covered under relief programs to taxes. This is particularly important when dealing with large private housing developments where interior roads and infrastructure have been

damaged, making it impossible for residents to occupy their units for extended periods of time while the developer waits for disaster funding approval to make repairs. In these cases, there are significant private sewer systems in private residential developments, townhouse developments. If you don't clean the sewer lines, then the basements continue to flood with sewage, and you can't move the people back in. We have no way to take action at this point, other than waiting for the developer to do something.

In an emergency situation, there are two main priorities: the operational response and management of the impact of the emergency on victims and citizens. I had the unique opportunity to manage the operational response to the flood event and be one of the public faces for the fabulous team that brought Peterborough through this flood event. Unfortunately, Ms Patricia Knapp, who managed the evacuations and citizen impact during this event, could not join me today. She continues to support the most vulnerable in our community as we attempt to close our evacuation centre on August 31.

Patricia Knapp makes the following recommendations: It is essential that excess capacity be built into the province's long- and short-term-care system to allow for placement of patients displaced by an emergency event. It was only by pure luck that our flood occurred at a time when a nursing home had been replaced by a new facility and was available to accept evacuees. Had this not been available, we would have had to relocate elderly patients all over eastern Ontario, a process that would have overwhelmed both city of Peterborough staff and Peterborough county EMS resources. In addition, proper administration and delivery of services to these 175 people would have been all but impossible.

The Emergency Management Act must recognize that almost all actions and programs required to ensure the safety and security of citizens are driven by the impact the emergency is having on the health of the victims. This is too serious an issue to be left to the resources of individual municipalities or medical officers of health. There needs to be clear provincial policy on the role of health authorities during emergency operations. The normal practices of evaluation, consultation and counselling prior to action are far too onerous to be useful during an emergency. Almost all social service legislation allowing for immediate action for the protection of citizens turns on the decision of health officials who have no clear policy to guide their decisions. The middle of an emergency is not the time to be researching health policy.

Local social service providers need the authority during declared emergencies to take the necessary action to protect the safety and security of their clients and the greater community in an expedient manner, without long discussions on health policy issues. They know what is the right thing to do for these people.

An excellent example of this is the urgent situation we are dealing with related to mould growth in homes. There are families with children living in homes with significant mould growth, but because there is no policy on

the extent of mould growth that is detrimental to human health, no orders have been issued and therefore no social service resources can be mobilized to help these people. A worker entering this same home would have to be wearing full protection, including a negative pressure air supply, but we are allowing children to play in the mould in the basement until the point where they start showing symptoms of disease related to mould exposure.

1410

The act should require written contracts with local disaster relief agencies such as the Red Cross and the Salvation Army. The province should take the lead in developing the template for these contracts to ensure that similar levels of service and timeliness of response are available across the province.

On a separate issue, the ODRAP program requires a clarified policy manual that specifically spells out what services—and at what levels—will be eligible for funding. Three weeks into the flood, we are still trying to confirm who is paying for what and how much. This makes quick decisions about how to proceed difficult at best. In addition, the policy changes that Premier McGuinty was able to put in place to provide early funding to individuals under ODRAP must become permanent policy.

It is a statistical impossibility to go through an event like this, with the double evacuation of more than 175 nursing home residents, without a fatality, but to go through it without a single injury is truly a miracle. It is unfortunate you could not meet Patricia Knapp and the rest of our team. It is not often one has the opportunity to meet a team of miracle workers.

In closing, I thank the committee for inviting the city of Peterborough to make this presentation on behalf of our citizens who have experienced so much in the last two weeks. If the lessons learned from our hard work and suffering can assist in amending the Emergency Management Act to help another community in dealing with their emergency in the future, we're honoured to do so. Thank you.

The Acting Chair: Chief Grant, thank you for the presentation. Momentarily, we'll go to questions. I might say that it would have been wonderful to have a few more of your staff folks who worked with you to provide us with a deeper insight. I think I can say on behalf of the committee and others that, similarly, we want to express our appreciation for the work that was done by you, by others and the volunteers for the people in your community.

The government side, 15 minutes: is that sufficient, at least on the initial round?

Ms Broten: Thank you very much for joining us today. We really appreciate an opportunity to learn from what I can tell is still a very recent difficult experience that all of us have watched carefully. In your presentation, I can certainly hear in your voice what a taxing period of time it has been for your community. So we very much appreciate you taking the time to come and see us and to share with us what was learned from that difficult circumstance in Peterborough.

Mr Grant: I'll do my best.

Ms Broten: One of the issues that we've been hearing from some of the other deputants that have come before us is not dissimilar from your suggestion with respect to the Red Cross and the Salvation Army and the need for more formalized agreements. I was wondering if you could just expand a little bit to tell us what those agencies did in your community and what types of things would have to be covered by that formal agreement that you're making reference to in your notes.

Mr Grant: I guess we'll go back to about 3:30 in the morning, when the rain started, and we realized we were evacuating a nursing home. Among a number of calls, one of my first ones was to the Salvation Army to get their mobile kitchen on the road, because we knew we were going to have to feed these elderly individuals some time early that morning. There is a kitchen at the Evinrude Centre but nobody to staff it. Fortunately, we had already had contracts in place with the Salvation Army to provide us food service, so there was no delay. We didn't have to get any particular individual on the phone and get approval to get this unit moved out of Toronto. So that's key.

The Salvation Army provided our food service needs for about the first five days of this incident, divided across two locations: one for our reception centre and one for our evacuee centre. We provided meals throughout the whole event, during the day right through until 10 o'clock at night, for anybody who came in who wasn't able to cook at home while they were cleaning up or whatever. As well, all the people who were actually permanently housed in our evacuation centre were provided three meals a day through that entire period of time with the resources of the Salvation Army.

On the other side of the picture, the Red Cross provided all of our reception capability to track who was where, where they went and all the details of their family histories and so on, so that when we got calls from out of town, we could tell people who we had, who we didn't have and where they'd been placed. They provided the services and distribution for our cleanup kits that were handed out to residents starting by noon on that day. They moved forward to provide our home assessment program. When people phoned in, we actually had a Red Cross worker go to the home to see what was wrong, to see whether these people needed counselling or social services actions and to see if the fire department was required to do a further cleanup in their basement.

Both of those agencies are still ongoing in their operations with us and will both probably be done on August 31, if we can get some of our internal systems in place.

The contracts need to speak to: What do they do? How much do they do? How much staff do they provide? What are their terms of reference exactly, because they very jealously guard their public reputation and their image, and don't like one or the other stepping in the primary territory they tend to operate in. I think there would be a real role for some template agreements. It would allow them to plan more effectively for the kind of

resources they can provide in the province, and would allow communities to have a stable base to build their plan around when they need help.

Ms Broten: Another issue you raised that we have also heard is with respect to entering on to private property. We've heard, for example, Dr Young indicating that he was concerned that you couldn't enter on to private property to perhaps build a dike, in some kind of prevention or mitigation effort in respect of a flood. The representatives from the Ministry of the Environment indicated that they did think they had some authority to do that.

You gave us one example with respect to the sewage. Are there other examples of the need, in this circumstance—the flood—or others that you've experienced, where you have not had the authority to go on to private property and that has hampered the safety and security of others?

Mr Grant: Maybe I am a more voyeuristic fire chief than some. I don't even consider the possibility of not being able to go on private property during an emergency. We did whatever had to be done. If we had to board something up, if we had to dike something, we didn't ask anybody. We went and did it in the public interest, and so far I haven't had any complaints.

Where the problem comes is when you're trying to get private property owners to do things that cost money for the benefit of their tenants or the greater community. At that point, you have some problems. Even these sites where I've got ongoing issues with the way they're remediating the site, I have never had a problem getting access to them or had anybody suggest we shouldn't be there. They just don't want to do the work until they find out who's paying for it, and I can't get people back into their homes because they're not doing the work. I want to be able to phone a contractor and say, "Go in there and clean those sewers out, and we'll worry about who pays for it later." Right now, I don't have the authority to do that.

That even applies to mould. When you've got a landlord who's got eight or nine apartments, and as far as he's concerned, the carpet will dry out eventually—don't worry about it; the people can live with it—and nobody is in a position to order him to clean that place up until the kids are sick, we've got a problem.

Ms Broten: Understood. Thank you.

Mrs Sandals: Just carrying on from that, in our look at emergency powers which are available in other jurisdictions that perhaps we should consider here, a couple of the powers that have been suggested are the construction of works to prevent, respond to or alleviate the effects of the emergency and also the restoration of necessary facilities. I'm not sure if that's exactly the wording that would cover the situations you're talking about, but it seems to me that what is being contemplated there are emergency powers that continue after the immediate crisis. From what I'm hearing you say, you're finding that during the actual crisis, your authority was not questioned; it's now that you're dealing with the

cleanup where you start to get the roadblocks. Could you comment on those—you've talked about the sewers. Would those sorts of powers help in that instance? Are there other things that are going on where you're having a challenge with the cleanup?

1420

Mr Grant: There are numerous challenges related to the cleanup. Your point is well made: During the actual emergency event, as a matter of public policy, people don't seem to interfere much with your ability to deal with the emergency. If you want to do something, they don't stand in your way. As you start to walk back from that and you're actually making or constructing things on somebody's private property, they start to get a little more reticent about what you're doing.

Certainly I can see that the restitution component would be very helpful. I think it would have to speak specifically to the idea of public safety and security. I wouldn't want to get into a fight about what's necessary, right in the middle of doing one of these restorations. We'd want to be able to say, "Here's what we're doing and it's covered because it's to improve the safety or security of the individuals in this situation."

A discussion we had—and they didn't include it at this time because we weren't sure exactly what to say—is that we definitely have too abrupt an act. You're either in an emergency or out of an emergency. We don't have that intermediate step for the recovery phase where you can provide some public confidence, both in your city and from the standpoint of people who might want to visit your city; you can drop out of the state of emergency but still maintain a lot of your ability to employ volunteers and take actions to help remediate the situation.

We really need some sections in the Emergency Management Act that give us recovery powers which are separate from those you need to actually deal with the bang-on emergency when it hits you.

Mrs Sandals: We were speaking before the hearing began formally about some of the other challenges you are having around the issue of basement apartments and restoring basement apartments. Would you like to talk about that?

Mr Grant: Absolutely. It seems that everything about this emergency is a challenge.

When people had their properties damaged, of course one of the first things they did was come in and apply for ODRAP assistance. Part of applying for ODRAP assistance is to provide your address. When we started to take the applications for ODRAP and compare them against the address database for the city of Peterborough, which is primarily derived by the fire department on our GIS dispatching system, we came up with in excess of 300 addresses that have applied for ODRAP funding that don't exist in our system, which are primarily illegal basement apartments.

These apartments were occupied. They're part of our primary housing supply. They're used significantly by our university and college students as affordable housing.

We're now in a position where we have a person with an ODRAP application that will likely be approved because it meets all the criteria, who has come in wanting to restore their basement apartment, but because the zoning is incorrect we can't issue them a building permit to do the work. In effect, we can't restore that housing at this point because it is an "illegal" basement apartment. In other words, it's an R2 occupancy in an R1 zone and you can't issue a building permit, notwithstanding that we've waived all building permit fees to encourage people to come in and get permits so they fix their houses properly. We're now saying to these people, "You can't do it."

I'm not an expert on planning and building issues, but our director of planning is currently working with MMAH on some Peterborough-specific action that can be taken that will allow us to issue these permits to restore these illegal basement apartments.

Mrs Sandals: We're trying to figure out how to override the Planning Act, which I suspect is the issue here: Where's the legal authority to override the Planning Act? Assuming you have people other than students—some of these are families living in basement apartments—where are the families who were living in these basement apartments?

Mr Grant: They're currently in our evacuation centre, and we are currently trying to find alternate housing for them.

Mrs Sandals: So this is a case where when we think about overriding provincial statutes, we often think of that in terms of an alarmist, "Oh, we're overriding people's civil rights." In this case, it's a simple case of some authority to override the Planning Act to allow restoration of living accommodation and let people get out of evacuation. There are some authorities here that we would not necessarily think of as the crisis authorities, but the follow-up authorities can be equally important in dealing with the emergency.

Mr Grant: You're actually talking about overriding statute just to allow what was there to be replaced.

Mrs Sandals: Thank you very much. That's very helpful. It's a different point of view from what we've heard before. Because you're on the ground, it's very helpful. Thank you for taking the time to come and talk to us.

Mr Grant: You're very welcome.

The Acting Chair: We have time allocation to the opposition. Mr Kormos, 15 minutes.

Mr Kormos: My apologies for not being present during your comments. I was called out to another matter. But I have read your submission, and I just want to say this: I thank you, and I think others on the committee share this opinion of mine, for once. But I want to thank you, because you've actually made specific recommendations rather than speaking in the vague and the general. That's valuable.

I'll talk with Ms Sandals later, I'm sure. Illegal apartments—apartments are illegal for reasons, aren't they?

Mr Grant: How long do we have? I'll do the five-minute issue—

Mr Kormos: Go ahead. Let's talk about that.

Mr Grant: OK. Let's talk about it for a couple of minutes. Residents in communities who construct their homes in neighbourhoods do so because they expect the neighbourhood to have a certain characteristic, and that characteristic hence maintains the property values of their homes. They jealously guard their zoning. They don't like to see group homes move into their neighbourhoods. We've had to create provincial overriding legislation in the Planning Act to force group homes into neighbourhoods so that those people wouldn't be stereotyped in a section of the city.

Basement apartments fall into the same category. To have one legal, you have to have R2 zoning; in other words, the potential of two dwellings in a building. But if you put R2 zoning, then you can have duplexes. As soon as you have a duplex, you put two basement apartments in, so now you've got a sixplex, right?—side by side. So it's difficult to get communities to relax their zoning requirements. However, at the same time, the people who buy these houses are trying to pay the mortgage. So they quietly, on their own, on the weekend and during the week, start finishing their basement. And it starts out usually with a bedroom and a bathroom, and they get a college student in. They get some income from the college student, but they get a little fed up with that student always being in the kitchen cooking. So the next year, they put in a little counter and a sink and maybe a microwave. Then the year after that, the wall goes up so they don't share a common stair. Three or four years down the road, we've got a full-fledged one- or two-bedroom apartment in a basement, and nobody really complains about it.

Recognizing that, in the Fire Protection and Prevention Act, we created 9.8, which is a basement apartment section of the act. So now we go out and do a home inspection as part of our routine education program and encounter a basement apartment which is illegal. We enter the basement apartment and say, "This doesn't comply with the fire code because it doesn't have this or that, so you've got to fix it." So the owner goes to city hall to get a permit to fix the apartment. They won't give him one, and they also won't order him to deoccupy it. So now I have an unsafe, illegal basement apartment that I can't do anything about. That's sort of the character of—

Mr Kormos: That's interesting, and I appreciate that. Look, I'm the guy who goes and lends support to OCAP squatters, OK? So don't get me wrong—amongst other OCAP activities.

One of the other phenomena you mentioned is being a university town. So is St Catharines, for instance. The problem isn't so much with basement apartments there; it's with absentee landlords and subdivided houses. Can you speak to that?

Mr Grant: Well, the volume of the problem I have in Peterborough is that I have one full-time fire prevention officer who does nothing but deal with student accommodation, whether it's basement apartments—an equally

large risk, since somebody in their wisdom changed the definition of family under the Planning Act. As long as the landlord is getting one rent cheque he can have 15 students in a House and it's a single-family dwelling as far as the Planning Act is concerned. And I can't get in there even though I've got lodging house legislation under the FPPA that would require fire separation doors on everybody's room, a fire alarm system, emergency lighting, exit signs—everything—if there's more than 10 students.

1430

You can take an old, three-storey home in Peterborough and put 15 students in it. If they all throw their money on the table every 31st of the month and hand the landlord a cheque, when I go to court the judge laughs at me, aside from the fact I never get to court until July, the students are all gone home and I can't find any witnesses.

Mr Kormos: Because of the huge backlogs in the court system.

Mr Grant: Yes.

Mr Zimmer: We might as well examine that issue too.

Mr Kormos: Well, now that we're here, yes.

Interesting stuff and a good perspective, I think. Valuable stuff.

Mr Grant: And our choice right now is extensive public education in the universities and colleges and a home inspection program in trying to keep these kids safe.

The Acting Chair: Anything further from the government side? Seeing none, thank you very much, Chief Grant, for being here today. We very much appreciate it and our general comments from both parties of the Legislature, and the work that you and the volunteers have been doing. Please pass that on to your mayor and your administrative officers so it might be communicated to your community through the political body as well.

Mr Grant: Thank you very much.

The Acting Chair: Seeing nothing else before us, I believe we stand adjourned until Monday at—

Mr Kormos: Chair, one moment, please. I'm wondering if this is an appropriate time to resurrect the issue, concern, around legal opinions for and to this committee in the course of the committee analyzing or digesting the material that's been put before it.

There's been some interesting dialogue, both in committee and on the record, including by our legislative counsel where he explained the respective roles of people, among other things, in his submission. Legislative research has already been asked for—again, I'm not suggesting that she hasn't been timely, because it's a lot of work—among other things, the references made by the OPP commissioner around case law during the course of his submission at the beginning of this week. I know she's following up on that and we'll get that in due course.

Reference was made to the McMurtry 1981 paper and the preference expressed in that paper to the common law

approach. I don't know whether research was specifically asked to flesh that out for us.

Ms Margaret Drent: I think we're also waiting to hear from, I believe, the deputy OPP commissioner, who had obtained legal advice prior to coming to the committee and was going to be forwarding some of that material to Katch.

Mr Kormos: So there we are.

Now, the unique position of the committee as a recipient of advice was canvassed from a number of perspectives. I know Mr Zimmer wanted to invoke constitutional convention—and he did. I appreciate that in terms of the role of policy lawyers from the Ministry of the Attorney General, who clearly can give advice to a cabinet minister, to a ministry, to the executive.

Mr Zimmer: Hold on a second. I'm having trouble following you.

Mr Kormos: Bear with me.

Mr Zimmer: I'll wait till the cellphone has—

Mr Kormos: There was a cellphone ringing. That's why Mr Zimmer had problems, because he, like I, doesn't understand why people bring cellphones in.

I don't dispute the position taken by the Attorney General policy lawyer for the moment here. We've got this unique position now of committees being able to draft and present legislation. My view was that that put it more akin to a governmental role than to the private member, to wit, any one of us, one at a time, especially since the committee derives its power to do that, I appreciate, from the standing orders, but in this instance, especially, more so than just the standing orders: by a resolution, by an order of the House.

Since then, we've had the benefit of some albeit cursory advice from a spokesperson for the Clerk's office, who expanded the dialogue to say that there are basically four types of bills: Pr bills—let's put those aside, because they're dealt with in a special process. So in the broader domain, there are government bills—government public bills—fair enough; there are private members' public bills, which are dealt with during private members' public business, unless of course the government calls them, at which point they may become government bills. That's something that happened in the last government when they were playing around in the Legislature. But now there are committee bills. The spokesperson for the Clerk's office explains that these even have a new prefix, I believe a "D," in front of the bill number.

Mrs Sandals: On a point of order, Mr Chair: Mr Kormos seems to be privy to some information that the rest of us are not in terms of advice from the Clerk's office.

Ms Broten: This was your conversation with Lisa?

Mr Kormos: This was a conversation that—

Interjection.

Mr Kormos: That's a good idea.

Mrs Sandals: Because we have no idea what you're talking about.

Mr Kormos: That was true this morning as well.

Ms Broten: Always. Every day.

Mr Kormos: But I understand.

The Acting Chair: The clerk's going to make a quick call to see whether or not Ms Freedman, I guess it is, might be available to come over—

Mr Kormos: I didn't mention any names because it's the Clerk's office that will do this.

The Acting Chair: That seems to be who it was, so at least someone understands. If they're available—

Mr Kormos: Yes, she's a person who could be contacted.

So anyway, what we've got now is we're at least being presented with, in my understanding of the Clerk's office analysis, some avenues that might be travelled to get the results we're seeking, to get the legal opinions. One, as I understand it, subject to correction, is via legislative research in both her personal role and in her own right as well as her ability to access legal advisers. The other interesting observation made, as I recall the conversation with the spokesperson for the Clerk's office, was our ability, of course, to summons people to the committee. In other words, the committee can ask anybody it wants to attend before it.

Of course, the question is, does that mean people like Mr Twohig, who was here this morning? That's the question that's then begged. But I've got to tell you, Ms Broten, that I'm interested increasingly in the prospect of having Mr Runciman talk about what happened when he was minister and was presenting that major, most significant, set of amendments to the act.

You know that my bent tends to be the non-statutory, non-codification approach. I think that's pretty clear. I've invoked the comments from the McMurtry report of 1981 many times. Quite frankly, if Mr Justice McMurtry were to have changed his opinion, in view of the praise that I've heaped upon him, that would be pretty persuasive stuff for me. Maybe Mr Justice McMurtry might be a valuable person to ask to come before the committee.

Ms Broten: I wonder, Chair, is there a resolution with respect to someone coming in from the Clerk's office?

The Acting Chair: I understand there is, in the next couple of minutes.

Ms Broten: OK. Certainly I can speak to the issues that you've raised. We'll wait for the Clerk's office to attend. But it was new information to me that, through their capacity to conduct research and seek advice, legislative research would have an ability to essentially engage outside counsel to give them that advice. If I'm understanding right, Mr Kormos, that's what it sounds like to you.

Mr Kormos: I didn't go that far. Maybe we should ask our legislative researcher, or maybe we should ask somebody from that office. I'm not sure whether it's proper or fair to ask her as compared to asking somebody from that office.

Ms Broten: Sure. I'll put the question on. I was saying that it was new information to me that through the legislative research office there was an avenue to engage—it sounded like, from Mr Kormos—outside counsel to provide more extensive legal advice on a

particular issue. I was wondering if you could speak to that point, or perhaps we just need to look into it and you want to seek further advice or clarification.

Ms Drent: I don't think I have personal knowledge of previous instances where our office has worked with outside counsel. I've asked the manager of the research service, who has a longer history in the office than I do and might be able to assist the committee, to come over.

Ms Broten: And he's on his way?

Ms Drent: Yes, she is.

Ms Broten: Thank you.

Mr Kormos: I want to make it very clear that you understand that my preference is that civil service lawyers do the advising. I am hell-bent, obviously, against contracting out or privatizing that role. My interest around legislative research's access to lawyers was that they may well have access to civil service lawyers and experts in a way that the committee doesn't, because they are performing this legislative function and they are separate. Again, the response to legislative research, were they to pose some of the same questions we put to policy lawyers from the Ministry of the Attorney General this morning, could well be different in that they wouldn't be inclined to say, "We cannot advise the committee with legal opinions," but maybe they can provide legal opinions to legislative research. I don't know.

Ms Broten: I understand your preference, Mr Kormos. Preference or not, my goal is to seek advice for this committee so that we do a good job. I think the committee should be informed of whatever avenues are available to this committee. We should undertake an examination of from whom we could get that assistance and make that decision. I think it is prudent for us to garner the information on a collective basis so we all know what we're talking about and it's not a singular person who has insight when the rest of us don't. At the

end of the day, I think we all have the same goal in mind, which is getting that advice, and now we're examining the avenues by which we can get it.

Mr Kormos: But surely we'd rather engage our own civil servants in the public sector than contract out their work.

The Acting Chair: Is it the committee's desire to continue this discussion in this context or, from the standpoint at least in the interim, taking it offline to the subcommittee subsequently, so that whatever process we're going to use can come back for either fuller debate or with some consensus having been built among the caucuses?

Mrs Sandals: Are people on the way?

The Acting Chair: I understand there's a staff person on the way. Is that correct?

Ms Broten: Mr Chair, if I might suggest, could we have a recess, an opportunity to discuss this amongst ourselves, and then come back? I know Mr Kormos wants part of it to be on the record. I'm more than happy to have an offline discussion and put the conclusion or the agreements that we reach back on the record, which I think is what he wants to happen.

The Acting Chair: The question is, is the preference to do that, to recess to caucus or bring it back on-line, subsequent to an opportunity for the subcommittee to meet?

Mr Kormos: I agree to a brief recess.

The Acting Chair: Let's then agree to a 10-minute recess.

The committee recessed from 1444 to 1503.

The Acting Chair: We're back in order at this point in time.

I believe we are adjourned until 10 am on Monday morning, the 23rd. Thank you.

The committee adjourned at 1503.

CONTENTS

Thursday 19 August 2004

Election of Acting Chair	JP-173
Emergency Management Statutes Review.....	JP-173
Ministry of the Attorney General	JP-173
Mr John Twohig	JP-174
Mr Graham Boswell	JP-174
Radiation Safety Institute of Canada	JP-187
Dr Fergal Nolan.....	JP-187
Dr Reza Moridi	JP-191
City of Peterborough	JP-194
Mr Lee Grant.....	JP-194

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Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38^e législature

Official Report of Debates (Hansard)

Monday 23 August 2004

Journal des débats (Hansard)

Lundi 23 août 2004

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Monday 23 August 2004

Lundi 23 août 2004

*The committee met at 1009 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): Could we bring the standing committee on justice policy to order. I'm Mike Colle, the Acting Chair. With us this morning is Peter Kormos, the MPP for Niagara Centre, representing the NDP. We also we have with us MPPs from across Ontario: Laurel Broten, the MPP for Etobicoke-Lakeshore; Wayne Arthurs, the MPP from Pickering-Ajax-Uxbridge and former mayor of Pickering; Jim Brownell, from Stormont-Dundas-Charlottenburgh, and Cornwall and Harrisons Corners; John Wilkinson, the MPP for Perth-Middlesex; and the MPP from wonderful Willowdale, David Zimmer.

EMERGENCY MANAGEMENT ALBERTA

The Acting Chair: We are here, seized with the mandate to review all existing provincial statutes as they relate to emergency preparedness. This morning is the first of a number of teleconferences we've established. This one is with the province of Alberta. On the line we have Dave Redman, who is the acting executive director of emergency management. David, are you there?

Mr Dave Redman: Yes, I sure am. Good morning.

The Acting Chair: Thank you so much for making yourself available. What time is it in Alberta?

Mr Redman: It's 8 o'clock.

The Acting Chair: On the beautiful Saskatchewan River, right?

Mr Redman: Yes, North Saskatchewan.

The Acting Chair: Right, a wonderful river. I was lucky enough to be in Edmonton a while ago and I was quite impressed by that beautiful river flowing through your city.

David, as you know, we are reviewing all the Ontario statutes. We also have a comparison of what is in place in various other provinces, enumerated emergency powers across Canada. One of the things we're doing is comparing what exists and the motivation behind some of the existing legislation out there. Could you perhaps begin by giving us a background of where you are as a province in terms of emergency preparedness and whether you've passed recent legislation. I know there has been some

discussion around this table that Alberta has taken some steps. We'll let you proceed with a presentation, and after that the members of the committee will ask questions.

Mr Redman: OK. The framework structure for our legislation is that we have the Alberta Disaster Services Act, which was last amended on December 4, 2002. It was amended as a result, of course, of September 11, but the act in its current form has been in existence since 1980, when it was revised to update it from the Civil Defence Act that had existed from about 1951 to 1980. Of course, there had been amendments through that period, but the fundamental framework structure was updated in 1980 to take it away from being a civil defence act and make it a full emergency management act with all the appropriate increases and decreases.

One of the things I need to point out, though, is that ever since 1951 our act has been structured on empowering by putting obligations on two orders of government: the municipal order of government and the provincial order of government. By that I mean that right from 1951 the original structure put obligations on our 314 municipalities that they must have emergency plans in place, those plans must be regularly reviewed, they had to form an agency under the leadership of a director of disaster services who was then accountable for it to the elected officials, and the elected officials form what's called a committee. That form has been in place for about 50 years, updated and then refocused just to emergency management, away from civil defence in 1980.

The amendments that happened in 2002 were simply to ensure that the act in no way precluded very significant mitigation and preparedness tasks. So we amended the definition of an emergency to make sure it wasn't imminent or pending, that it covered the full gamut so that we could include our counterterrorism work. Probably most significantly, we added a section, 17.1, which makes all work that's done under our crisis management program—it gives the Alberta Disaster Services Act paramouncy over our freedom-of-information act for any information that's generated; in other words, citizens don't even have the right to ask for the information that's been generated in a classified manner under counterterrorism. It's not an exclusion; it's paramouncy of one act over the freedom-of-information act.

Under our act, we have two regulations at the current time. One of them is currently called the government emergency planning regulation. It has just about concluded a massive and extensive rewrite which will make

it the government emergency management regulation, as opposed to planning regulation, more appropriately using the term "management" to include mitigation, preparedness response and recovery. It's not just a planning regulation, it does all four functions.

It's greatly expanded to include government departments' responsibilities for having crisis management officers, consequence management officers and continuity management officers and then appropriate tasks and duties for both the deputy head and for those appointments being clearly defined in that new regulation.

We hope that it will be put into force by December of this year. It has been through a three-year extensive review process, and we hope to finish that up very soon.

The other regulation which falls under the act directly is the disaster recovery regulation, which covers how we put in place financial assistance programs for both widespread and localized emergencies in our province, totally independent of anything that's covered under the disaster financial assistance arrangement. We see the DFAA simply as something that we go to after we've already put a program in place for Albertans.

That regulation needs an extensive rewrite, and it will be commenced as soon as we get assent on the government emergency management regulation this Christmas. It's outdated. It's well over 10 years old and it needs to be brushed off and the terminology needs to be improved to match the way we do business in Alberta today.

That's basically our legislative framework. Then, of course, there's a series of plans that fall under those acts and regulations, the two largest ones being the Alberta emergency plan, which is our all-hazards response plan, and the government of Alberta counterterrorism crisis management plan, which is our counterterrorism plan that's been in force for over two years following September 11.

The Acting Chair: Which ministry was the lead on the act, as amended in 2002?

Mr Redman: Our act falls under the Minister of Municipal Affairs, who is responsible for all emergency planning and emergency management within the province of Alberta from a government-wide perspective. The bill that amended the Alberta Disaster Services Act was in fact Bill 31, which covered a number of acts—I think it was about 12 in total—and made emergency changes within the whole series of the acts, like the dangerous goods act, the Alberta Energy and Utilities Board Act, the health act, a whole series of acts, all with respect to counterterrorism, at the same time.

The Acting Chair: Right. Our Commissioner of Emergency Management is Dr James Young, just for the record. He gave us a chart comparing enumerated emergency powers across Canada. I noticed in one area here where it has the different powers given under legislation to the provincial government, under Alberta, members of the committee would notice it says, "Require disclosure of information."

There's a blank here indicating there are no powers. On the other hand, you've just indicated that there is now statutory power to override the privacy laws in Alberta.

Mr Redman: The act has paramountcy over the FOIP act, but if you're saying powers of a minister in an emergency, under section 19.1 of our act, the minister has extensive powers during an emergency. We also extend those same powers to the municipal order of government when they declare a state of local emergency. The powers come upon declaration of a state of emergency or a state of local emergency. The powers are identical, both for municipal elected officials as well as for the minister. They're the sweeping powers that you would have associated with the old War Measures Act; for instance, the right to fix prices, to conscript people, to enter premises without warrant. They go on and on for about a page and a half.

The Acting Chair: And these are given when an emergency is declared. Who has the right to declare that emergency?

Mr Redman: A state of emergency is declared for the entire province by the Governor General in Council. For a municipal order of government, it's declared by the committee, which is made up of the elected officials of the municipality.

The Acting Chair: So once that state of emergency is officially declared by the Governor General in Council, then these extraordinary override powers come into effect.

1020

Mr Redman: Correct, and they fall to the minister for the province and to the elected officials of the municipality for a state of local emergency. We see about 12 to 15 declarations of states of local emergency every year in Alberta. But I would point out that there has never been a declaration of a state of emergency made in the Alberta, because our municipal order of government is extremely well trained and well versed in their powers and they use them appropriately. They have all their plans and mechanisms in place, and have had that for about 50 years.

The Acting Chair: So there's never been an occasion where an individual municipality has declared this state of emergency?

Mr Redman: Sorry; I'll be more clear. We see 12 to 15 states of local emergency declared by our municipalities each year. They cannot declare a state of emergency, only a state of local emergency, which is within their jurisdictional area. A state of emergency for a portion or all of the province of Alberta has never been declared.

The Acting Chair: So therefore the local emergency has been declared in 12 cases.

Mr Redman: Annually.

The Acting Chair: Give me an example of some. The water shortages, for instance?

Mr Redman: We wouldn't use it for that but it can be used for a water shortage. It tends to be like things like extensive forest fires that are burning through a community, as you saw in BC—we've had a series of them in the last three years here in Alberta; train derailments, where we had a number of cars derail, both up in Hinton a number of years back and about four years ago in Red

Deer; an extensive well-release explosion or well-release where poisonous gas has been emitted to the air; major floods. We have flooding within the province every year through our major river networks. The municipalities will declare a state of local emergency as it gives them the power to force evacuation and take other measures—so those types of activities.

The Acting Chair: If any members of the committee have questions, be free to jump in.

Mr John Wilkinson (Perth-Middlesex): Just a quick question, Dave: You said about 12 to 15 local states of emergency have been declared, on average, a year and that there are sweeping powers that devolve to the municipal government—elected officials. Have there ever been any subsequent challenges about how that authority was exercised because they were able to enter on to private property and that type of stuff?

Mr Redman: Actually, no. Some people may find that surprising, but I put it to you that internally, within every community, because they've been trained to do this—we run a district officer program that ensures that they exercise and train these each year—they only use the powers under the act which are appropriate for the emergency they're in. We've never had a challenge against those powers within the province of Alberta.

But the minister also provides an oversight function there. So if there's an inappropriate declaration of a state of emergency, the minister of course has the powers to squash it, amend it or approve it. They must send that declaration to us immediately upon declaration. They must then also, of course, make the declaration known to all of their citizens and exactly what they intend to do with the declaration.

So, no, we've never had a challenge to it, because they use them extremely judiciously and appropriately. We've never seen a misuse, certainly, in the past 20 years.

Mr Wilkinson: Mr Chair, as a follow-up, the key to that, then, is adequate training of your municipal councils.

Mr Redman: Absolutely.

Mr Wilkinson: So the cost for that is borne by the municipality, or is there assistance from the province to help municipal officials get up to speed so that they're well versed in the powers and the exercise of it?

Mr Redman: It's done by both. The municipal order of government, because they have the obligations under the act, which means they must have a committee, they must have a DDS, they must have a plan and the plan must be tested regularly, spends a portion of their own money to ensure that they meet that, but we also run training programs through our district officers across the province. We put \$350,000 annually into localized training, which allows both the councils and the agencies—ie the fire, police, EMS, public transit, medical officers of health—to run exercises and conduct specific training courses. For instance, we run training courses on how to run their EOC. We run training courses for the municipal councils on what their obligations and powers are. We do that every year across the province.

Ms Laurel C. Broten (Etobicoke-Lakeshore): We've heard over the last couple of weeks about the fact that municipalities are certainly able to exercise the powers and have the tools they need without criticism during an emergency itself, but it's in the after period, the cleanup period—for example, we heard from the Peterborough fire chief that problems have arisen with respect to trying to get landlords to clean up properties in that after-flood period. I was wondering whether you could comment on that, in terms of whether your legislation assists in the period following the emergency.

Mr Redman: No, not specifically because the declaration of a state of a local emergency is for seven days initially. Of course, it can be extended for whatever period of time is required. But once the emergency is past, it's inappropriate for that declaration to continue, and so even if they had attempted to, the minister would squash it. Probably the hardest of all four phases of emergency management—being mitigation, preparedness, response and recovery—is the recovery phase, because once the initial emergency has been dealt with, people become reticent to conclude the actions appropriately.

We facilitate that here in Alberta—Emergency Management Alberta being the provincial agency—through our district officers. When we see a community that's still struggling after the fact, our district officer brings it to our attention and we bring whatever appropriate assistance is required to encourage them to continue. Because my branch falls under the Ministry of Municipal Affairs, my minister is also the one who is responsible for good government at the local level. He can bring a series of assistance tools and—I'd hate to say "enforcement," but that type of a function to the table, to help the municipal officials move on.

I can give you an example. A small tornado went through our town of Grimshaw about a year and a half ago, causing extensive municipal and private property damage. We're still trying to finish some of the work following up from that. There's a whole series of tools being used to help that community get itself back to rights. But I would agree with you and say that that's an area that could definitely do with improvement everywhere.

Ms Broten: In respect of the seven-day emergency, is there a rollover clause in terms of extending that seven-day emergency, and what's the oversight? To whom does that request go if there's a request being made to extend that emergency period?

Mr Redman: When a municipal order of government determines that they need to make the declaration, they make the declaration in writing. It's faxed directly here to my operation centre and we provide it immediately to the minister. Our minister is the one who does the initial review to either squash the declaration, modify the declaration or support the declaration.

If at the end of six and a half days the emergency still has not passed, they use exactly the same form. It's the same committee under the council that initiates the

request for extension. It's done on exactly the same, very simple one-page form. They simply state the reason and the area still affected, and it again comes up to the minister for his review. It's very unlikely that the minister would squash or modify because the municipal government very much knows what's required, although he does perform a review and we here in the branch give him the recommendations for the review.

In my knowledge, there have only been two occasions where the minister did not in fact squash the recommendation but called the local council and asked them to terminate it themselves, because they of course can terminate their request at any time.

Ms Broten: I just have one more question. We have coming later today some folks from the agricultural community. One of the things we've heard in our earlier deputations was the new challenges that we as a province, and I guess across the country, are facing as a result of emergencies that are arising out of our agricultural/agribusiness sectors. One of the issues that Dr Young raised with us was the inability to sufficiently dispose of carcasses in our province if we had a major agricultural emergency here.

The province of Alberta, I would think, has probably tackled this issue as well as we are doing here in Ontario. I wonder whether or not you could share with us any experiences that you've had as the result of emergencies based on either zoonotic illnesses or the agribusiness.

1030

Mr Redman: Absolutely. Both as part of our initial Disaster Services Act, but certainly then again under our counterterrorism, we've looked at all 11 major industrial sectors that make up our province and looked specifically at the types of things that could occur with them.

Under our initial Disaster Services Act there's a responsibility for emergency plans, for hazard-specific plans if required. We have a very extensive plan for any type of communicable disease within our livestock community and our agriculture community. For instance, the livestock is covered under our foreign animal disease eradication support plan, FADES plan. In there, there would have to be either a declaration of a state of emergency or states of local emergency, in our opinion, as a portion of the implementation of that act to give the appropriate powers to put in place things like mass carcass disposal. Certainly our municipal order of government is prepared to carry them out already, but that's ensuring that the provincial order of government and the municipal order of government plans can be linked. That's why we've built an entire new operations centre here in Alberta that allows us to operationalize those plans.

I'll give you the example. We have 1.2 million head of cattle walking around Alberta on any given day. The vast majority of them are in extensive feedlot operations with up to 50,000 head in a single feedlot in the southern portions of our province. Once you have something like foot-and-mouth disease you don't transport animals. They must be disposed of on the farm of origin, because

if you move them you're taking a 10-kilometre circle of contamination and driving it straight through the province. So in order, then, to find disposal sites for the amount of animals we'd have to do without contaminating our water supply and our future food supply, we feel that the powers under the Disaster Services Act would be required.

Alberta Agriculture, Food and Rural Development also has some powers under their act, but in order to actually carry out the huge coordination that's required, we believe that a declaration of either states of local emergency or a state of emergency for a portion or all of the province would be required, and then we would bring together here in this operations centre the 17 lead government departments out of our 23 departments to coordinate that actual response with Alberta Agriculture, Food and Rural Development or the Canadian Food Inspection Agency, as appropriate, in the lead agency chair within the operations centre.

Ms Broten: Thank you very much.

The Acting Chair: Next is MPP David Zimmer.

Mr David Zimmer (Willowdale): You said your legislation trumps the privacy legislation in Alberta. What's been your experience about complaints when an emergency has been declared and privacy concerns have been trumped? Do you have any experience at all and, if so, what's the experience?

Mr Redman: I need to clarify. Our act only has paramountcy over freedom of information and privacy with respect to counterterrorism. It does not do so for all other types of hazards or emergencies, and it's very specific in the act under section 17.1. So it has that ability when we're talking about the very classified work that we've done with all 11 of our industrial sectors to identify what is the most critical infrastructure in the province and then to put in place extensive security measures around it, sharing classified intelligence on a daily basis with those partners and then putting in place an emergency notification system that can respond and that can send warnings within five minutes to the entire province, including all our first responders, all our municipal order of government and all of our industry. So that exclusion is only for counterterrorism.

We went through an extremely extensive public consultation period of nine months and we dealt with our privacy commissioner and a number of representational groups. Once each of those groups was met with and explained the purposes of that exclusion for counterterrorism only, we in fact for second and third reading had no complaints from either the public, industry or any other legislative body.

We use that exclusion on a daily basis, but we've never had a legal challenge to it yet.

Mr Zimmer: In your consultation throughout the province, did you canvass the stakeholders' reaction to a more blanket override of privacy concerns and, if so, what was their reaction to that canvass?

Mr Redman: No, we did not because we do not see that as appropriate. We only see it as appropriate for the

classified work done under counterterrorism. So no, we didn't ever ask them for more powers than what are currently in the act. We've kept it very specific to counterterrorism and very specific to crisis management under counterterrorism. In fact, the reaction from our municipal orders of government, our citizens and in particular our industry was strong support because they saw the necessity for it.

Mr Zimmer: What's your experience been, then, in dealing with privacy concerns in an emergency crisis not of a counterterrorism or terrorism aspect—a routine flooding or bushfire, forest fire, that sort of thing?

Mr Redman: The personal information that we gather at registration centres and materials like that, we use the standard exclusions that are already available under our privacy act to make sure that people don't gather or use the information that we have gathered in an inappropriate way. We also gather emergency contact information for all of our municipal order of government and first responders, which we hold in an encrypted database. But we simply use standard exclusions under privacy for that as well to protect the privacy of individuals.

We haven't had any privacy concerns raised. Occasionally at the municipal order of government there are people who are concerned at the registration centres that the information that is being gathered won't be used after the event. But of course, when that information is gathered the appropriate forms are used that guarantee the privacy under the existing privacy legislation.

Mr Zimmer: Speaking as the executive director of emergency management in Alberta, do you find that the system, as it's currently structured in Alberta, works well?

Mr Redman: Our act, I believe, is excellent. Our municipal order of government can always do with more resources, but I believe you will find that Albertans are far more ready to take action at the local level. They don't want to see provincial interference unless there's a real need for financial assistance. I think the structure that we have in place is fundamentally sound. What we're doing now is adding to it rather than amending it.

Mr Zimmer: In what three areas, if any, do you think you could use some changes or some improvement?

Mr Redman: First of all, we've just completed a two-year program to put in place continuity planning for every one of our government departments, the excellent work that has been done across all 23 government departments to make sure that they, if interrupted, can return to their critical services. We have to continue to push the button on that area to make sure that they continue.

The second area is our massive industrial expansion that's happening in the province. While it's wonderful for the tax base and it's excellent for job opportunities, each of those industries brings with it concerns for emergency management, and because they're growing rapidly and in clusters, mixing different industries, it's making sure that we don't lose sight of the potential hazards that come with that wonderful economic growth.

Finally, it's continuing to support our bread and butter, which is our municipal order of government, with appropriate resources for them in the face of the new hazards, but in particular we have real concerns around counterterrorism because of the type of industry we have and the extremely strong connection we have with our American partners to the south, making sure that we put in place security, not just safety.

The Acting Chair: David, thank you very much. It's been most helpful and, again, most informative for us with your experience. We are mandated to come up with a piece of legislation to update our emergency preparedness here in Ontario, so as we go through this process I hope we can count on you to maybe give us a bit more direction. We may be calling on you; one member of the committee or myself will do that, and I hope you can make yourself available.

Mr Redman: Absolutely. We work with all our partners across the country, each of the executive directors or equivalent. I know Dr Young quite well and we meet regularly throughout the year. Anything we can do to be of assistance, we'd be delighted to.

The Acting Chair: One final question: You are appointed by the Minister of Municipal Affairs?

Mr Redman: Correct. In fact, I just won the competition, so I'm no longer the acting. I won the competition back on July 27 and have been appointed by the minister for this role.

The Acting Chair: Congratulations. Could you please give us the name of your minister?

Mr Redman: It's the Honourable Guy Boutilier.

The Acting Chair: Could you please pass on the committee's thanks on behalf of the Legislature of Ontario, the government of Ontario, for making yourself available?

Mr Redman: Absolutely.

1040

The Acting Chair: We'd appreciate that sincerely. Anyway, all the best. Again, thank you so much for making yourself available to give this invaluable presentation to our committee here in Ontario.

Mr Redman: I wish you folks all the best of luck.

The Acting Chair: Thank you again, David.

Mr Redman: Cheers.

The Acting Chair: Cheers.

Members of the committee, if any of you would like them, we have those contact numbers for some of the interviews. I think Mr Redman would be extremely helpful, given his position in Alberta.

BARRY SMIT

The Acting Chair: The next presentation is Dr Barry Smit. He is a professor of geography at the University of Guelph, and he's the Canada research chair in global environmental change at the University of Guelph.

On behalf of the committee, I want to thank Professor Smit for making himself available. He's an individual with an international reputation on global environmental

change, and he's certainly one of Canada's leading experts on climate change.

I heard from Liz Sandals that you're travelling all over the world. It was great to know that you were available to come before the committee, Professor.

Dr Barry Smit: I assume you want me to speak to the mike.

The Acting Chair: Yes. Could you, please?

Dr Smit: I prefer to move around, but I'll sit.

The Acting Chair: I guess you're going to have to speak from a seated position.

Dr Smit: Thank you, Mr Chair.

The Acting Chair: Could you move the mike closer to you? It rotates.

Dr Smit: How's that?

The Acting Chair: Wonderful.

Dr Smit: It's my pleasure to be here. It's my understanding that emergencies—the sorts of things you're looking at in your deliberations—are triggered by all sorts of things. Amongst that array of stimuli are things related to weather and climate from time to time. I'm not sure whether they're big issues or small ones.

I gather that my invitation, which came on Friday, was because of the view that not only are weather and climate sometimes important in triggering emergencies of one kind or another, but that with climate change, those conditions may change: the frequency of them, the nature of them and so forth. So it's wise to think about how they may be incorporated in programs like emergency management.

In some ways, Ontario is way ahead of the pack in this regard. I've worked for 20 years internationally on the climate change issue and also in Canada with provinces, with ministries of agriculture and others, and with the federal-provincial attempts to come up with programs dealing with climate change, particularly on the adaptation side. It's very, very slow progress because so many people in the climate change field want to see climate change treated as something separate and special. Yet in practical terms, climate change issues, if they're going to be treated at all, need to be incorporated into the other decision-making structures that already exist, whether it's resource management, investment, infrastructure or emergency management. So I was excited to hear that this committee is looking at climate change in that light. In the international field, they call it "mainstreaming," that is, incorporate or mainstream climate change into your ongoing day-to-day decision-making and policy.

Today I understand my task is to share with you my views on how climate change may relate to emergency management. I'm going to do that generally. I'm not going to talk about any specific statutes. I'll start by giving you a quick primer on climate change itself. So for those of you who know this, it would be a good time to go to sleep.

The earth has a natural greenhouse effect. The atmosphere lets some of the solar radiation through, and then heat from the earth is re-emitted. A good portion of that is captured in the atmosphere because of the chemical

composition of that atmosphere. That's natural. That has always been the case.

Ever since humans have started cutting down trees and burning fuels and things, we've been modifying the composition of that atmosphere and causing its behaviour to change. The causes of that are pretty well known. We burn fossil fuel like crazy, and so all of that carbon dioxide goes into the atmosphere. There are a whole bunch of other things—fertilizers, deforestation—that put gases into the atmosphere.

If you're like me, I never thought of that; I thought the atmosphere is infinite, that it can handle anything. But we now have good measurements of what's happening in the atmosphere. This is one of the gases, the concentration of carbon dioxide, and it is, from all sorts of sources, known since about 1800-50 to increase at a rate never before observed, to levels never before observed. That's really not disputed. Even the people who don't believe in climate change will accept that. It's the same with other gases—methane, nitrous oxide from landfills and agricultural activities, all sorts of the things; these too are greenhouse gases. They trap heat in the atmosphere and it's known that they are increasing.

So the question becomes, "OK, the atmosphere is changing. So what?" The most common thing we here about is change in the earth's temperature, global warming. There are all sorts of models, these complicated general circulation models, of the earth's climate which estimate what might happen to the earth's temperature up until the end of this century, I guess. You see that there's quite a wide variation in the estimates these models come up with, and that's natural, because they're based on different sets of assumptions. This one up here, the high one, says, "Let's assume we keep doing things the way we do or perhaps use even more fossil fuels and other emissions." The ones on the low side are, "What if we're able, as a globe, to reduce the amount of emissions?" Pretty much all of them, though, show an increase in temperature.

How good are these models? This diagram serves two purposes. The red are the observations; that's actual temperature from about 1860 on. The grey are the model predictions for that same time period. The two points here are, first, that the models are pretty damn good. They can predict very well the changes—in this case still temperature—that we've observed, not only the average but some of the variations from year to year, although we mostly hear about the average. The second point in this slide is that it's not only an average change in temperature, but you'll see the extremes also change as the average changes. In the 1930s and 1940s the peaks there were considered extreme, but in the 1980s and 1990s they're not extreme at all; they're quite normal. You have new conditions which are peaking up there more frequently.

Part of climate change is not only global warming, the change in the average temperature, it's also a change in some of the extreme conditions—not only temperature but also moisture, some intense events like intense rain-

fall and some other conditions. They're not all well modelled because the climate models have been focusing on temperature. People like you need to say, "We need a better handle on changes in the frequency or magnitude of certain extremes"—crank those people in Environment Canada or wherever to modify the way in which they do these analyses to not just look at temperature, which is what they are very skilled at.

Some people say, "Hang on. This is just natural variation over geologic time," and to a degree it is. In fact, were it not for the greenhouse gases, we would be in a cooling period. You people talked about the next ice age. Well, I don't know about the next ice age, but all of the conditions, the earth's rotation around the sun, sunspots and those things combined—over the last 150 years and into the next several hundred the earth would normally be cooling, but the greenhouse gases are on top of that, so we actually get this warming and the other things.

The top line here goes from right, which is 250,000 years ago, to left, which is current. The top is temperature. You see there that is an association between temperature and the levels of methane and carbon dioxide on the bottom over those periods of times. So there's an association.

You say, "What caused those?" Frankly, I don't know. I wasn't there and I haven't heard a good argument as to why those things change. Maybe they're to do with various other things that trigger climate, including rotation of the sun, volcanic activity, all sorts of things.

One of the key things is that if you look on the left-hand side, the 1990 level of carbon dioxide is way higher than what has been experienced in the last 250,000 years; so too is our average global temperature. In fact, the 2000 levels are already higher than that. So, yes, there is natural fluctuation over geologic time in gases in the atmosphere and temperature. We are superimposing on that a greater degree of change in these gases and a consequent greater degree of change in our climate.

1050

OK, big deal. So the climate is changing. It varies from year to year anyway. We probably won't even notice it. It's hard to detect. We'd need to have another 100 years before we'd notice any statistical significance in climate. But what does it matter, especially for Ontario? There are a number of sectors that are sensitive to changes, particularly related to water.

Here I'm looking at shipping in the Great Lakes. The Great Lakes are responsive to temperature, evaporation and precipitation. The Great Lakes fluctuate, not year to year so much but over three or four years, five years. I don't know if any of you have a cottage on the Great Lakes somewhere and the kids have put a little marker of their height. If you also put water height, you could plot—that would be traditional knowledge in Ontario, I guess—the variation in water levels for the Great Lakes.

Well, they've been pretty low over the last several years. That may be just part of the variation. It may also be part of the new norm. The modellers suggest you're going to have low. Is that an emergency? Probably not; it

might be for shipping companies that can't get as much cargo through; it might be for marinas that can't get boats in and out. If people start dredging in order to make it possible for the ships to get through the connecting channels, we may have a release of materials that may be problematic and represent some kind of emergency.

Certainly the climate change is not just these average temperatures and moisture; it's also these extremes. Here's another example, taking drought as a case. The average drought condition may increase over time and still not be problematic if you think of the shaded area as the range of conditions within which people can get by; their coping capacity, if you like, or the threshold. If this is a farm operation or something that's sensitive to drought, they can get by with somewhat drier conditions or somewhat wetter. But when you get these peaks, that's a problem: a problem for the individuals, and, if you get enough of them, a problem for governments and for societies in general.

Here with climate change, the average may not be a problem. But we may get more frequent and more severe droughts. Here in Ontario we've had—other than this year, which is one of those down ones in terms of drought, it's cool and wet, but previous to that we've had three or four very dry, hot years, which for some people is great but for some people is problematic. In fact, Agricorp, the provincially supported crop insurance program, has had the highest payouts ever in the previous two years.

So the probability of drought may change or the probability of other extremes may change. In this case, the probability of a serious drought was one in 20 years, but with climate change it may become one in four or five years. It's not that we can predict it next year or the year after, but the likelihood of getting some of these extremes which may be problematic can change. Now, some of them may become less frequent, but some of them will become more frequent.

Obviously, the previous two years were a problem for agriculture across the country, but, as I mentioned, they were also a problem in Ontario. It's not just temperature and moisture, as in drought; it's the way in which the moisture comes down. There are also concerns about the frequency and intensity of heavy rainstorms or hail or untimely frosts and what have you. Some people say there's an increased frequency of forest fires, partly because of the accumulated dryness enhancing the conditions.

None of these things are going to be caused by climate change, not even by climate; they're a combination of things. But climate change may make the problems worse; climate change may actually moderate the problems.

If you look at catastrophic events, and this is an international one I pulled up on Friday afternoon, the re-insurance industry—Munich Re and those sorts of people—is absolutely convinced that the increase in losses—insurable losses and other losses—worldwide can be attributed in part to increased severity and frequency of

catastrophic weather events. Of course, part of that increase is because of the increase in investment in vulnerable areas: higher-value properties that are going to get wiped by a storm or tornado. But it's also, in their view—they've done all the analyses—because of an increase in the frequency and severity of extreme weather events associated with climate change, and they are factoring that into the way in which they do their business.

If we bring that closer to home—Peterborough—which was very much a weather- and climate-related event, we could say, "Gosh, that was too bad. But hey, it's not going to happen for another 50 years," or whatever. Well, with climate change, it may occur more frequently than we would otherwise expect. So I guess if you're in the business of emergency management, don't just assume that the frequency of the past will apply in the future. People are saying, "This year is really cold and wet." Well, it is compared to the last 10 years, but if you compare it to the last 50 years, it's not especially cold and wet at all. It's about normal. It's just that we have experienced so many hot, dry years, and mild winter years, that we are thinking that they are the norm, and they may well be. So consider that in deliberations where you're looking at events that are problematic or disastrous in some way and that are related to climate or weather conditions.

And there are others: human health. This is a US study that looked at weather-related mortalities, trying to predict into the future. They argued that you're going to get a heck of a lot more associated with climatic conditions. In this case, it was largely heat stress, more frequent and more severe hot periods. We say, "That's not a big deal." I don't know, was it last year? How many thousand people died in France and other parts of Europe? Was it 15,000 or something? I don't know; was that considered an emergency?

If the conditions that underlie mortalities are changing, it's probably worthwhile saying, "Is there a way in which we can factor that in, in terms of the likelihood or perhaps in the design of our management systems to deal with that?"

West Nile virus: There are a number of vector-borne diseases that are sensitive to climatic conditions. Ontario, like many other parts of Canada, has been relatively free of a lot of diseases and illnesses and viruses and what have you because we have the severe winter kill. I've heard people, epidemiologists and others, who have looked at this particular problem and said, "Part of the reason we're getting more of it is because we're having less frequent and less severe winter kill." Mosquitoes can stay in the drainage areas and come out earlier in the spring than they otherwise did, still carrying whatever it is that they're spreading around. So it may be that the conditions which facilitate the spread of some of these diseases like West Nile virus are enhanced under changing climate conditions.

What do you do about it? There are really two strains of attack. The one is to try and not change the climate as

much as we are; that's a big one. That's Kyoto, that's all the provincial negotiations about Kyoto and energy, retrofitting, alternative energy sources and the big deal about all that. The other strategy, which most people say should be done at the same time, is to adapt, and that is, include the risks associated with climate change in your resource management policies, strategies and decision-making for individuals, for businesses, for municipalities and for governments at the provincial and higher levels. There are a whole bunch that can do that, obviously: water resource management, infrastructure planning, health and emergency planning—your committee.

So let me leave you with two messages. You can plan for a climate change, if you choose, for those conditions, and emergency management is a great place to do it. You don't have to have a separate section or policy or anything; you just incorporate it within the risks where climate change may have an effect.

1100

There has been recently released—I believe it's officially released now—a report on natural hazards and disasters in Canada by Dave Etkin of Environment Canada and the University of Toronto. It's a cross-country study of disasters and hazards, particularly weather- and climate-related and including climate change in there. It's certainly available, and that would seem to be pertinent to your committee's deliberations, with more specifics than I've given you today. So one message is you can plan, or you cannot plan and just let people adjust.

I talk a bit funny. That's because I grew up in New Zealand. I grew up in New Zealand because my father was born in southern Alberta. His parents were homesteaders there and in the 1930s they suffered a series of serious droughts along with some other things, like a Depression. My father left the farm and rode the rails, like many young people did at that time. He ended up in Vancouver and got on a boat going who knows where and ended up in New Zealand. That's a type of adaptation that we can probably avoid these days. Of course, we already do so with all sorts of programs to try to manage those sorts of climate-related conditions better than was done previously, but certainly there's an opportunity for including climate change considerations in emergency management.

I thank you for listening to my suggestions.

The Acting Chair: Thank you very much, Professor, for that lesson in climate change 101. I think we all need that. It's critically important. I'm glad you mentioned that we, as a committee, feel that our analysis of climate change impacts on emergency preparedness should be part of the mainstream approach. That's been emphasized by Dr James Young. Also, we had the Insurance Bureau of Canada: Mr Yakabuski emphasized the need to look at the impact of climate change in terms of what's happening with Peterborough etc.

We have questions from the committee. I just have one question before they start. Dr Young mentioned in Peterborough—you talked about the frequency. They, as

you know, had a 100-year flood a couple of years ago, and Dr Young referred to something that caught the committee by surprise: a 300-year storm two years later. I think that really illustrates the point that you made about the fact that it's not going to happen every 50 years but it could happen every four or five years where you get one of these calamities. That's something that Dr Young is well aware of.

My question is on the 300-year storm. Are these types of events probably going to be more prevalent, more common, or is it just something peculiar to Peterborough and the Kawarthas?

Dr Smit: First, remember that the estimates of a 100-year storm or a 300-year storm are based upon the historical record of storms, how frequently they seemed to have occurred. They have nothing to do with how regularly they occur. In other words, it's not every 100 years or roughly, it's just on average over a long period of time. So the fact that Peterborough gets hit by a 100-level and then a 300-level—that's giving us an indication of the level of severity and its frequency—a few years later doesn't necessarily mean that the climate is changing. However, it is consistent with the climate changing, because the climate scientists don't yet have a good handle on the frequency and severity of extreme events. However, if you look at the latest inter-governmental panel report, this big international thing, which is vetted by thousands of scientists and all levels of government, so it's quite a conservative document, it says that for Canada as a whole, and particularly central Canada, there are a number of extremes that can be expected. They don't have a high level of confidence, but it includes intense rainfall, intense rainfall events. That's along with an expectation that you'll also have increased drought. Overall, you'll get less moisture but it will come in boomp-boomp conditions. So people planning for Peterborough shouldn't say, "Well, we've had the 100 and we've had the 300, we can relax," because obviously it may occur—in fact, it's more likely to occur—with climate change than it would otherwise.

But as to the vulnerability to any of these things, there are two things: the conditions that come down and the nature of the community that experiences them. If Peterborough wasn't on that river valley, low-lying etc, with the infrastructure it has, it wouldn't be as vulnerable. If it was on a nice little hill or if there was some sloping, that storm could come down and probably wouldn't have an effect. So the nature of vulnerability to events—what makes an event a disaster—is related both to the event and the condition of the system that's receiving it or the community.

Mr Wilkinson: I just want to comment. In my home community of Stratford, just two years ago we had more rain in a shorter period of time than Peterborough did in one of these tremendous storms, but we're the highest point in Ontario. We ended up with 200 basements flooded with raw sewage, which was a disaster locally. I think the city is looking at somewhere between \$50 million to \$70 million to redo all their storm water manage-

ment, just to take that into account. What we've been hearing is, you have to. You can't assume that because that happened, it's not going to happen again. As a matter of fact, it's just proving the point that it's more likely.

You're going beyond the mandate of the committee and making a great suggestion, which is that you actually need to have government incorporate the whole idea that this climate change is happening. My question is, can you point to or is there any example of a jurisdiction anywhere in the world, since you're an expert, where they've actually gone to that?

Dr Smit: A lot of my work is in the developing world, and that's exactly how they're doing it. For instance, in the Caribbean, the CARICOM nations, with Canadian sponsorship under CIDA, have incorporated it in a variety of their public programs, including environmental impact assessment. So here's an existing environmental assessment act and there's a requirement to consider conditions associated with climate change when that's put in place.

Within Canada, some municipalities are doing this already. I believe—I'll stick my neck out—somewhere around Milton they had to redo their water supply or their sanitary sewage system. This is just hearsay, but the word I got was that they changed the diameter—not much, just a little bit and it cost quite a bit—in order to accommodate exactly the situation you described in Stratford. They're not sure that things are going to—we're not sure of much at all, are we? We do risk management. It was worth their while, to avoid the extra cost and hardship if the system didn't work, to oversize a little bit.

Certainly companies do that. Shell had a big platform on the North Sea and it just changed its structure a little bit. The Confederation Bridge to PEI was modified a little bit, because with climate change you might get sea level rise. So the engineer said, "OK, this bridge is going to be there long enough; let's factor that in." I think they modified—I don't know exactly how. I should get more specifics on this.

Let me think of other jurisdictions. There must be some in the agricultural area, for example, wherein their drought and assistance programs are saying, "Look, let's not assume that droughts are going to be rare events." In Ontario we should probably think about that, because Agricorp may run into trouble if you have more and more claims, more frequently.

Ms Broten: Just to pick up on Mr Wilkinson's questions, does a jurisdiction like California, for example, consider climate change in their fire prevention strategies? Certainly they've conducted some reviews over the last number of years as a result of the disasters and emergencies that they face. Do you know if any of those jurisdictions have, as a result, included consideration of climate change? You're shaking your head, no.

1110

Dr Smit: No, I don't know. It's not that they have or haven't; I don't know of California. I know that researchers on fire ecology working in Alberta and BC are trying to figure out if there's any contribution of

climate change as evident in the increasing dryness for the fires that have occurred there. I presume one of the audiences for that work would be the government agencies responsible for management of fire.

Mr Zimmer: You're speaking as a professor and an educator; you've been all around the world and so on. One of the important things, I think, on this whole issue is getting the general public up to the same level of knowledge or concern or critical analysis that perhaps you and others are at. Have you given any thought to the importance of awareness programs for the general public so they're not too far behind their political and scientific leaders?

Dr Smit: Thanks for putting me on the spot. Yeah, I've given it a lot of thought, because I believe we all have a responsibility to do that. I agree with you that, unless the general public believes it's an issue in some way, then not much is going to be done.

There are very widely ranging opinions on how you do that. Most of the work to date has been trying to have people understand the climate science part of it—what I gave you at the beginning. When I've seen that done, even by exciting presenters and educators, most of the audience falls asleep or leaves the room—even when I've done it. Because it takes so long before it's connected to their well-being, their welfare, things that matter to them, it's my belief that we need to mainstream that too; that is, find the connection to things that matter to people. Talk about the experience in Stratford or Peterborough or whatever and say, "That's an issue. Yes, you get that from time to time with the variable weather. Did you know that we might get that more with this?"

Similarly, the people who are influenced by water levels on the Great Lakes know that over the years they've gone up and down for as long as the Great Lakes have existed, but have you noticed they're a little more frequently low? For some people, that is a problem. They dive out of the cottage and hit the rock or their boat hits the rock. For some people, it's a serious economic problem. For others, it's a real advantage. They're not flooded or hit by storms as much. So there are always winners and losers.

My view is that the entree to what is climate change can be most effectively undertaken by connecting it to things that matter to people now. That's my view also with regard to public policy. I don't think there's a place for a climate change policy. I think you should have an agricultural policy, a municipal policy, an emergency management policy, and within each of those you consider climate change, along with all the hundreds of other things that have to be considered.

The Acting Chair: Thank you very much, Dr Smit. Again, I think you've certainly reinforced in our mind the necessity to marry climate change with public policy in a comprehensive way, not in an anecdotal way. I hope you can bear with us elected officials as we try to make our way through this maze called government. Anyway, you've given us that inspiration, I think, and I do appreciate, again, you making yourself available on such short notice. It's been most helpful.

Mr Zimmer: Since you're visiting from New Zealand, just outside the door here there's a display of the Commonwealth air defence program from the last war, and there's a display on the Royal New Zealand Air Force.

The Acting Chair: Thanks again, Doctor, for being here.

MINISTRY OF ENERGY

The Acting Chair: The next presentation this morning for members of the committee is from the Ministry of Energy. We have Rosalyn Lawrence, the director of the consumer and regulatory affairs branch; if you could come to the front, please? We have approximately 45 minutes, so use whatever time you wish to give your presentation, and then members of the committee will ask questions or make comments.

Ms Rosalyn Lawrence: We'll try to keep the overview brief to afford opportunity for questions and comments.

My name is Rosalyn Lawrence. I'm the director of the consumer and regulatory affairs branch of the Ministry of Energy. That is the branch within the ministry that has overall responsibility for coordinating our emergency preparedness and response activities.

With me here today is Mr Paul Murphy, who is the chief operating officer of the Independent Electricity Market Operator, or the IMO. You'll see in the context of our presentation that with respect to the electricity sector, the IMO is effectively the ministry's delivery arm on preparedness and restoration. So he's going to speak in a little more detail as to how our broad framework gets operationalized both to prepare for emergencies as well as to respond when one occurs.

In terms of the overarching framework within which the Ministry of Energy operates, we are one of approximately a dozen ministries designated by order in council under the Ministry of Community Safety's Emergency Management Act. Our responsibility is for energy supply matters, and as such we are required to formulate emergency plans to mitigate adverse health and safety consequences that could potentially result from a major energy supply disruption.

In the ministry we have plans in place for the electricity sector as well as the oil and natural gas sectors. The overarching purpose of the plans is to set out a plan or a course of action to ensure that energy market participants or energy companies are linked not only to the ministry but also to activities under the provincial emergency plan as well as to specific provincial, federal or municipal emergency response actions.

The plans define the responsibilities of the various market participants. In electricity that would include transmission companies, generators, large industrial and commercial companies and local distribution utilities. In natural gas, our interface is principally with the two gas companies, Enbridge and Union. We deal largely through

the petroleum industry in terms of meeting the petroleum sector's needs.

The plans go through and outline the key participants and also spell out their responsibilities for restoration and what they are required to do to manage the consequences and impacts of a supply disruption.

The other purpose of the plans is to outline coordination mechanisms and procedures to link the provincial operations centre, which is activated in the event of an emergency, with the energy sector participants during emergencies. In effect, this is spelling out a list of 24/7 emergency contacts and various communications protocols as to who calls whom to either identify needs, on the one hand, or to ensure that resources are deployed to meet needs in an emergency.

The plans also provide for a ministry action group. This is parallel to what other ministries are required to do. In effect, they are the body within the ministry that's put in place to direct and coordinate response. That would include internal business continuity plans as well as external sector-related plans. The MAG is comprised of most of the ministry's senior executive and it is intended to facilitate not only information flows back and forth but specific decision-making, where that's required, from the minister or deputy minister.

1120

In terms of legislation that speaks directly to the sector, the ministry has two principal acts: the Electricity Act, 1998, and the Ontario Energy Board Act, 1998. Under the OEB act, there is provision in part VIII which sets out a framework to provide for the fair allocation of gas to respond to an existing or an impending shortage. Those provisions were, I believe, put in the act in the 1970s in response to the energy crisis of the 1970s. They have not been proclaimed. If they were proclaimed, they would effectively require natural gas distributors to develop allocation plans for rationalizing gas supply. Those plans would go forward for approval and public review and comment before the Ontario Energy Board.

In addition—and I'm not certain if you've heard from the Ministry of Consumer and Business Services—under the Technical Standards and Safety Act, that minister may also make decisions to halt or curtail the supply of natural gas to particular consumers if considered advisable. A key advisability test would obviously pertain to a safety encroachment or standards failure. For example, if there was the possibility of an explosion due to a ruptured pipeline, the minister could close the supply on that basis.

Under the Electricity Act, 1998, the Minister of Energy and the Independent Electricity Market Operator are established as the entities responsible for emergency planning in the electricity industry, as well as assuring or having responsibility to assure that electrical emergencies are restored as quickly as possible.

This provision of the legislation was developed based on some hard lessons learned following the ice storm of 1998, and I would say principally what those pointed to were a lack of a centralized coordinating body for

emergency response in the sector and as well a number of communications mishaps, for lack of a better word. Clearly, following the ice storm there was broad agreement that clearly understood and well-established communications protocols were a cornerstone to be able to respond effectively these emergencies.

So in response, the Electricity Act basically authorizes the minister to require the IMO to prepare and file emergency plans with the Minister of Energy. In addition, the minister is empowered to require market participants, generators, local distributors, customers etc to file emergency plans, again, as he considers necessary. There's definitely a link between the two, and one level of plan that is specific to a particular company or a particular class of market participants is both informed and incorporates and links with the IMO's overarching response plan.

The IMO is asked expressly in legislation to assist in coordinating the preparations of all of these plans, and the minister can direct either the IMO or specific market participants to implement the plans as necessary. In addition, although neither the ministry nor the IMO has specific responsibility, the minister receives a plan regularly that is filed by the owners and operators of the province's nuclear facilities with the Canadian Nuclear Safety Commission, and that is to provide a level of assurance that those plans are in place. I see you're hearing from the CNSC later this afternoon. They are the principal focal point for safety regulation in the nuclear sector, and they are the principal venue to deal with emergency plans in that sector.

The Electricity Act creates the overall obligations on emergency planning. The IMO is further authorized to set specific standards and procedures to deal with emergencies through its market rules, and all market participants have an obligation in their licences from the Ontario Energy Board to comply with market rules. That, in effect, is how the compliance end of it works. Again, the CNSC would have the same responsibilities on nuclear restoration.

In terms of the process for coordination—Paul is going to speak to it in a little more detail—emergency management is staged in two tiers. One speaks to the emergency preparedness aspect of emergency planning and effective management. The IMO chairs a stakeholder or market participant body called the emergency preparedness task force. That is the nexus where lessons learned or post-mortems would inform future procedures and response standards and guidelines. That was the body that did the due diligence/lessons learned from the blackout of last summer and that is the body that would propose new standards and guidelines to govern emergency planning overall. That group is also the coordinating body for electricity sector emergency drills and exercises, and that is the principal forum through which the ministry's plan as well as sector participants' plans are tested on an ongoing basis.

In addition, once an emergency has been declared, whether that's province-wide or specific to the electricity

sector, the IMO activates what is called the crisis management support team. Again, the ministry sits on that body; it's chaired by the IMO. It has all the various companies and sector participants represented. That would principally be a forum for sharing information, identifying issues or problems during an emergency and ensuring that coordinated response is able to get underway.

A practical example: Last year during the blackout, a number of generators were running full tilt and running over or were about to run over their approved standards for emissions set out in their certificates of approval. That was identified in the forum of the crisis management support team, that was communicated back to the ministry, we connected with the Ministry of the Environment, and the Ministry of the Environment was able to expedite the issuance of variances for those generators.

Mr Paul Murphy: If you're keeping track of the slides, they're not numbered, but the one we're now speaking to is entitled "Obligations of the IMO and Market Participants."

The Acting Chair: Ours are numbered. We're on page 8, I think.

Mr Murphy: Good. I'll put a number on mine.

Market participants, as Rosalyn described, are composed of the generators, transmitters, distributors and large industrial customers—specifically those that are connected to the IMO-controlled grid, the high-voltage transmission system—as well as those that are responsible in the market. There are about 230 of these market participants, and each of them is required to file an emergency plan with the IMO and has done so.

The plan addresses such things as how their emergency plan is activated, to ensure they have a process in place; how does their plan mitigate the impact of electricity disruption on their business, on their company or on the customers who are affected by their service; how do they do their practising and training of the plans that they have—because they're only as good as people are familiar with them; whom do they talk to to coordinate and communicate during emergencies; and how do they coordinate the recovery actions with others within the industry?

1130

When we receive their plans we don't approve them; we review them. We have a checklist that we examine for completeness of the plans, and we identify things that we think should be added to the plans back to the participants and then they refile them with us. It's important that each of these market participants have these plans identified.

In addition, there's a subset of the market participants, of these 230, that is more critical to the restoration of electricity service in terms of the integrated power system, the high-voltage power system. There are about 85 of these participants that directly control devices that are required to be able to restore a power system. These participants are required, in addition to their emergency plans, to file with us an addendum that has a specific

restoration plan, called a restoration plan attachment, that identifies specific activities they need to undertake, obligations they have, since they control specific devices.

The Ontario emergency response is really divided into two segments, the first being the operational response to an emergency, to a large power system disruption, aimed at getting the lights back on, and a second which is directed toward issues management, not so much the real-time operation but dealing with some of the issues and policy matters that can emerge during a blackout.

The operational response is covered under a plan called the Ontario power system restoration plan. This is one of the plans that has been prepared with the advice, review and support of the emergency preparedness task force that Rosalyn spoke of, and it essentially sets out the objectives, strategies and priorities for restoring the power system after a blackout. This is the plan that was effectively implemented last August and followed through the restoration process. The IMO directs the restoration, the market participants that I mentioned follow that direction, and in addition to following that direction they are obligated to take some independent actions in the event of a widespread disturbance. This is clearly articulated within the plan as to what is expected of these market participants to act on on their own, and what they're not supposed to do and should only do under the direction of the IMO to ensure that we have a coordinated response.

The plans deal with participant obligations for training, testing, staffing, the independent actions that they have to take, as well as integrated testing of a plan they are required to periodically be part of, an overall integrated test of the plan which we conduct. Prior to the blackout of 2003, we'd conducted two large-scale power system restoration exercises and drills involving, I guess, most of southern Ontario, and the eastern and western portions of the province. These proved extremely helpful when we actually experienced the blackout in 2003. Participants and we had practised this, working together. The integrated testing remains a critical component. In fact, this year we've modified it to make use of the lessons learned in the previous two years' tests—three years, because we did another one last year—as well as the actual event of the blackout last summer, and we've actually changed the structure of it. This year we'll have seven two-day workshops with a larger number of our market participants' staff involved, in order to better convey the lessons learned from a real operation as well as the simulations that we've done in the last few years.

The second major component of the response is the crisis management, or the issue management, and this is under the plan called the Ontario electricity emergency plan, which is the second major plan developed under the emergency preparedness task force. This plan effectively authorizes that task force, gives it its authority, as well as articulates the philosophy that emergencies should be managed at the lowest possible level. If there's a local emergency, it should be managed locally. If it's a widespread emergency, there's coordination that needs to

be done. But not everything that happens needs to be coordinated across the province. If you can manage it locally, manage it locally. It articulates the crisis management support team structure. The team is made up of a select set of market participants and government representatives that I'll outline later, chaired by the IMO, and the focus of this is on public health and safety issues and on communications during a power disruption.

First, I'll talk about the operational response. The restoration plan sets out the objectives and priorities, but it's a guide. It establishes these but allows the flexibility needed to adapt to the circumstances at hand, because no two emergencies will ever be alike. This is the plan that's really focused on the execution by the folks who are managing the real-time, minute-to-minute operation of the power system, from our company as well as the transmitters and distributors and the customers connected to us, in managing their processes. The priorities of the plan are focused on restoring the electric infrastructure, getting back electric power to generators, particularly the nuclear plants first, to transmission stations that may be running out of their backup supplies after a period of time, or to distribution stations.

Within the plan, restoration of customers initially is really geared toward enabling the reconstruction of the infrastructure. Customers are restored in order to make sure that voltage and frequency on the power system are stable, not really for the sake of restoring the customers. However, during that process, priority consumer loads may be identified, and the plan has the flexibility to allow the identification of those priority loads so that efforts can be diverted, if you like, to be able to restore power to those priority loads.

There are a couple of examples from the August 2003 blackout of priority consumer loads that emerged during the blackout. One was hospitals, not normally necessarily a priority load because they have backup facilities, but if they have trouble with their backup facilities or if they're running short of fuel to support those backup facilities, then they became priority loads, and we took extra measures to try and get restoration to those locations. Water treatment plants were much the same. Again, with backup facilities they shouldn't necessarily need to be treated with priority; the responsibility is there to have those capabilities, but if those capabilities are not available for whatever reason, then it does become a priority as the blackout is extended. The last one was the oil refineries. It was a very dramatic example, I guess, of the importance of the delivery infrastructure and the production infrastructure of fuel, because in an emergency there's much reliance on backup capability. There are backup diesel generators that replace the normal electricity you have and supply a very good backup to the critical functions, but that eventually gets used up and needs to be replaced, and without the ability to produce and deliver diesel fuel and gasoline for these essential services, to be able to transport them and pump them and get them into these facilities that need them, you soon run out of your backup capability. So they became a priority during the blackout, and in fact we've done some work

since then with the industry to identify the importance of these refineries and give them some priority treatment in the way we manage the load restoration.

I'll now turn to the Ontario CMST. This is the support team that's put together quickly in the event of an emerging emergency on the power system or in response to one. In the 2003 blackout, the crisis management support team was activated about 10 minutes into the disturbance, the blackout. It had its first meeting about 30 minutes later and continued for the next nine days to have meetings via conference call, initially about six per day, gradually decreasing as the week wore on. The representatives on the crisis management support team are representatives from different segments of the industry, with the generators represented, transmitters, distributors, the large industrial customers represented—the commercial sector was an addition made during the blackout last year, actually, recognizing the importance of that segment, given the prolonged nature of the blackout—and of course the Ministry of Energy. This, through the Ministry of Energy, is the primary interface with the provincial government's emergency operations centre.

This support team is also exercised as part of our annual exercises. It has been activated, I guess, a little bit more frequently in preparation for some things that didn't develop into true emergencies, so that testing may be not quite as needed. But we do annually exercise the crisis management support team to make sure that we've got everything in place to deal with these.

1140

This support team doesn't always have to be activated in full, either. We've adopted an approach where you really activate as much of it as you need. If there's a distribution problem that is limited to the distribution system, there's not necessarily a need to involve the generators in coordinating the action; it may be between transmitters, distributors, the Ministry of Energy and ourselves. And that would be the extent of activation that we'd undertake.

Of course, the focus of the crisis management team is on public health and safety as well as communication. A very big role of the crisis management support team is in communication. On this slide I've already covered who the team is. It's chaired by myself. It can be activated through me by any of the members that see an emerging issue.

The focus is on public health and safety. We gather information, we share information amongst the members; it's a two-way sharing of information. We collect information from the folks who are on this team. We dispense information as to the status of the power system. If we know the duration of a blackout, we communicate that. We provide information on the condition of those provinces and states around us in terms of assistance that they can provide. Sometimes the emergency is weather-related, so we'll provide as much weather information as we can.

An important element to this team is that the normal confidentiality provisions that exist within the market—

because a lot of the information that's being shared in a market sense is commercially sensitive—can be dispensed with, and we can talk freely and openly and share that information amongst the team members to make sure that we have the best information possible.

Of course, the coordination is with the provincial operations centre through the MOE rep on the team. The purpose is to develop recovery strategies and response strategies, and importantly, to develop key public messages associated with a blackout and the current state of it to ensure that there is consistency in the messaging that's being delivered. The existence of this team doesn't replace the obligations for individual companies to fulfill their own roles in terms of communicating with the public or with their own customers. But by having this information sharing and coordination of the key messages that are to be conveyed, we can ensure that there's some consistency, which again, through the blackout of last year proved to be extremely important. Communication becomes very critical. In fact, we've made several changes as a result of the lessons we learned last year. Thank you.

The Acting Chair: OK. Now we'll have time for questions. MPP Broten?

Ms Broten: I was wondering whether or not you could focus for a moment on tools necessary to respond to emergencies. That's the mandate of this committee, to look at whether the legislation we currently have in the province gives the government, each ministry, the tools they need to respond.

One of the issues we have been looking at—and we've talked a lot about the blackout—is examining the lessons learned from the blackout from that perspective. Was everything in place that was needed to respond to that emergency? I wonder if you could, in answering that question, consider the issue of, what if the players hadn't co-operated in the way that perhaps you're going to say they did.

Ms Lawrence: I think, in fairness, from our experience during the blackout and on the troubleshooting side, any time an issue arose that meant somebody was up against a legislative barrier, through all of these vehicles we were able to turn around quite quickly and have that resolved. I think I mentioned the Ministry of the Environment, and the certificate of approval variances were issued quite fast. I don't know how familiar you are with the structure of the provincial operations centre, but all of the key ministries implicated in an emergency have a desk officer there, so that communication and co-operation and coordination happen quite naturally.

One example I recall is, we had fairly regular—twice or three times daily—conference calls with the distributors' association and about 70 to 80 local distribution companies would be on the end of the phone. In that forum, a couple of them raised the possibility of them being able to run municipal standby generation. That put them at odds with some of the affiliate separation rules that are in place at the Ontario Energy Board, and they're governed by those codes. We also had OEB representation on those calls. So the OEB, which has discretion to

grant its own exemptions from licence provisions or code provisions, was also able to respond quite quickly.

Obviously, the call for load reduction or constraints was voluntary in nature. We certainly didn't run up against a problem in terms of people complying. We had conference calls with the Ministry of Economic Development and Trade, and joining us on those were members of the association of the major power consumers. Again, where an issue was brought to somebody's attention where it was alleged or rumoured or somebody had heard that one of the large industrial concerns in fact wasn't operating in compliance with the voluntary call, people would pick up the phone and manage it that way, but voluntarily. Further to your question, it did rely on co-operation. Certainly we never had any indication that that wasn't going to be there for us.

Ms Broten: Did you want to respond?

Mr Murphy: I'll just respond that all of the requests we had during the blackout—and I think the blackout was probably one of the most severe tests we could have of our emergency plans, and we were quite pleased when we went back and reviewed them after the fact that the plans seemed to be quite robust. All the requests that we made during the blackout for anything that was out of the ordinary, exceptional, some of the variances that we needed, were granted. So the authorities seemed to be there, as far as we could tell.

With respect to the curtailment, if voluntary curtailment had not worked, we have, and we have to have, provisions in our emergency action list that we apply not just in the kind of emergency we were talking about last summer but any time of any day. We have to have the ability to interrupt customers. We have the authority to make market rules that allow us to do that. The market rules do allow us to do that.

One of the requirements of electricity is that you must keep supply and demand in balance at all times. If curtailment had not been successful in keeping that balance, we would have had to require involuntary curtailment—or “rotational load shedding” is the term that's used—where customers are interrupted on a rotating basis of fixed duration in order to be able to maintain the balance between supply and demand. It's quite a disruptive process, particularly when we're talking about some of the magnitudes we experienced in the blackout last summer. So voluntarily curtailing production is generally considered to be a less impactful, although very impactful, mechanism than involuntary curtailment and just shutting people off, perhaps without their knowledge.

Ms Broten: Is the rotational load shed available in the commercial and industrial load sectors?

Mr Murphy: Yes, it is.

Ms Broten: So, for example, if the blackout had lasted a longer period of time and you needed to direct electricity to the hospitals, to all of the identified target areas, there is a mechanism whereby you could have moved through various sectors and reduced the load to be able to implement that for a longer period of time?

Mr Murphy: Yes, there is. Through that process, the schedules that are used for rotational load shedding,

priority loads can be identified to be exempt from those schedules. So if there is a particular hospital that should not be interrupted, then it wouldn't be interrupted if it's identified as being a priority load that shouldn't be on the schedule. As I said, when it lasts for a very long period of time, it is a disruptive process. So the longer the time and the larger the magnitude, the more disruptive that involuntary shut-off mechanism is, but it is a mechanism that would allow us to direct and keep things in balance.

1150

Ms Lawrence: There was a point during the blackout at which, in anticipation of the potential need to revert to load-shedding, all local distributors were asked to ensure that their water and sewage treatment facilities were hooked up so as to be exempt should it be implemented. They were given time to do that. They were also given time to call around to some of their key customers, again, from a health and public safety perspective, like the hospitals, to alert them, "Here is a number to call in the event that we move to this. We will try and give you as much notice as possible, but please be prepared."

Ms Broten: Part VIII of the OEB act that you indicated has never been proclaimed, was the ability to do that noticeably absent during the blackout? Did that issue come up, the allocation plan for approval of natural gas?

Ms Lawrence: No, not at all. It's drafted to be quite specific to a shortage of natural gas and, again, from a context dating back to the 1970s when that looked like it might actually happen. This was electricity-related. The gas companies helped out where they could, but weren't adversely or overly affected.

Mr Zimmer: Following up on Ms Broten's questions, just taking a slightly bigger view of things here, if you looked at all of the energy market participants—and they're listed at page 12: generators, transmitters, distributors, commercial and so on—this question is for each of you to answer. Can you give me three areas or three places where new or improved legislation might be of assistance in this whole area of managing the potential energy crisis? I would ask each of you to give me three areas where you think either new or improved legislation might make life safer for everybody.

Ms Lawrence: I might defer to Paul to start just in terms of being more familiar with actual emergency plans that are in place right now.

Mr Zimmer: I ask the question because at the end of the day we're charged with the responsibility of coming up with some draft legislation.

Mr Murphy: Do you want me to respond first?

Ms Lawrence: Sure.

Mr Murphy: The most important legislation that needs to be put in place is not in Canada, unfortunately; it's in the US. The US does not have any legislation that requires mandatory compliance with reliability standards. That's been on the books in terms of an energy bill in front of Congress for many years, but it's wrapped up in a very large energy bill and it has not yet passed through the Legislature in the US.

In Ontario, we have that through our legislation, through the authority given to the IMO to make market rules to ensure reliability. We have effectively, through the market rules, adopted all of the reliability standards of the North American Electric Reliability Council, which is the international standard setting body for reliability. In Ontario, our market participants are compelled to comply with those market rules and there are penalties and sanctions available if they do not comply with them. That isn't the case in the United States and that's the single, most important piece of legislation that needs to be put in place.

Mr Zimmer: Second?

Mr Murphy: The legislation is quite enabling for the IMO and for the responsibilities that we have to exercise to maintain reliability. I think the area that we were exploring just a little bit earlier is probably one that some consideration may need to be given to if there is a desire to manage an energy emergency; if it's anticipated, to be able to manage a long-lasting energy emergency on a basis different from the emergency measures that we have the authority to exercise right now through rotational load-shedding. I don't know what authorities exist within the legislation currently to allow that to happen and to ensure that it can happen. Frankly, I don't have a third one.

Mr Zimmer: And your three?

Ms Lawrence: I can think of one, which might be three between us, not directed to market participants per se, but there was one point during the blackout when a number of ministries and departments were pouring through their existing statutes to see whether anybody had the authority to fine people who were reported to be squandering energy. The visual is the storefront with cold air pumping out on to the sidewalk on day three while the system is not fully stable and back up and running. I think it was determined that nowhere in any ministry statute or provincial statute was there an authority to fine and levy penalties in that scenario.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): I'd like to draw your attention to slide 12, the crisis management support team slide. Looking at it in great detail, both the province and the municipalities, among others, have emergency planning functions under government structures. When you were referencing some of the blackout activity, there was a reference to municipal variance requests that were made. I'm just noting, on the structure for your crisis management support team, there's industry sector representation, commercial sector representation, which represent a third of the load in each of those cases. About a third of the load is residential or kind of related to public health and safety, but there doesn't seem to be here a good means of integrating the representatives of the residential sector. In effect, that could be the municipal government sector. In the old days, the distributors would often do that under the old commissions. That doesn't necessarily exist any more under the new rules and new structures that are in place.

I'm thinking specifically during the blackout—and you mentioned the variance issue—of a situation where

municipalities, ours but others too probably, wanted to use their recreation facilities as cooling centres when it was very hot. But we had difficulty in accessing the resources necessary to get the decisions made to say whether or not load could be directed to bring back on stream something like a municipal facility, with the air conditioning necessary to allow it as a cooling centre. Is there something missing here or does someone else within the overall structure have some responsibility for that other third, in essence? Is that part of the government sector function? Is it seen in that way or is it just something that's not high on the agenda because the commercial industrial loads are often in large quantities and can be targeted more readily?

Ms Lawrence: I think, in practicality and with respect to the specific request I referenced, the interface for the crisis management support team is very energy-focused and the municipal representation on the team is under the guise of the local distribution companies, which are more or less—like, the IMO is our delivery agent—the delivery agent in the field with respect to sector restoration.

I think typically, to the extent that the Ministry of Energy would hear about a particular municipality encountering a particular problem or situation, that would come to us largely through either EMO directly or through municipal affairs, which is represented at the provincial operation centre. I think in part it speaks a lot to the need to streamline and clarify accountabilities for who is directing or informing whom in the sector, and that is how we've tried to put that into practice.

Mr Arthurs: I think in part what I heard was that at least during that situation you were, or had been in the past, very dependent upon the distributors within communities as being the prime interface. Is that fair?

Ms Lawrence: Yes, and Hydro One, where there is no municipally owned utility.

Mr Arthurs: Right. You may want to, on a go-forward basis—I hate to get into a lot of detail—think about that a bit because of the fact that the distributors now—the one example I can cite—represent at least six, if not seven, different municipalities under what's traditionally been thought of as one local distributor, and they're not contiguous; they're spread across southern Ontario. Maybe it's just something to have a look at, because ultimately it may not be the best vehicle to use as that interface in emergency matters.

Ms Lawrence: And minimally, we can talk to distributors about how to make that happen.

The Acting Chair: Just a couple of questions: Where is the IMO physically located—the operations centre for the IMO?

Mr Murphy: We don't normally make that public.

The Acting Chair: You don't have to if it's sensitive, but perhaps you could make that public to the committee in closed session.

Mr Murphy: Is this a closed session?

The Acting Chair: No, it is not, but we can do that at a different time.

I guess it sort of dovetails into the location of Dr Young's operation. I think they're not too far from this precinct, and I think they're in a high-rise building—whether that's appropriate, given what could happen in an emergency energy lockout with an emergency operations centre in a building that requires elevator access etc. Anyway, we'll try to get that information, either myself personally or in closed session.

The next question I have is on the comment Ms Lawrence made about squanderers. Did you subsequently find any jurisdiction that has fines the government can impose on people who are squandering energy in a time of crisis?

Ms Lawrence: We did a review of a half dozen to a dozen other sectors in the context of their electricity legislation and didn't come across any specific incident related to energy statutes.

The Acting Chair: So you haven't been able to find—

Ms Lawrence: No.

The Acting Chair: I guess research is going to try to ascertain if there are jurisdictions that have put measures in place. I know that during the blackout there was a lot of public concern about the fact there seemed to be a lack of appreciation of not squandering energy during that crisis. All the lights would be on in the high-rise towers in Toronto. Does the government have the power to tell them to turn the lights off etc? The air conditioners were operating, it seems, when they weren't necessarily important. We'll try to find that out.

Ms Lawrence: And we can assist legislative research as best we can as well.

Mr Wilkinson: Mr Chair, might I suggest that research look to California, where they had rolling blackouts, as probably the best—if anybody has those rules, it's probably the state of California.

The Acting Chair: I would like to thank Ms Lawrence and Mr Murphy for making themselves available. You've been quite helpful in explaining the different functions of the IMO and the Ministry of Energy as they relate to emergency management and energy management in times of crisis. We'll follow up with maybe a couple of other things and follow up with IMO on some questions I had.

We'll recess until 1 pm back in this room.

The committee recessed from 1204 to 1305.

The Acting Chair: I'll bring the justice committee to order. I'm MPP Mike Colle, the Acting Chair of the justice committee.

NOVA SCOTIA

EMERGENCY MEASURES ORGANIZATION

The Acting Chair: We are, as you know, going through the statutes of the province of Ontario to ensure that they are adequate in terms of meeting our emergency preparedness and emergency management needs of the future. In that regard, today we have a second teleconference set up. This morning we had Dave Redman,

the acting executive director of Emergency Management Alberta, who was very, very helpful.

This afternoon we're going to get some insights from the province of Nova Scotia, our great neighbours to the east. In fact, I was listening to a great CBC program on the Acadians and their great history at Grand Pré and Evangeline there. They had an excellent program. They had a conference of Acadians in Halifax just recently. It was a wonderful program revisiting a most important part of our history. Anyway, I don't want to divert your attention to that.

From the province of Nova Scotia, we have Mike Lester, who's the emergency measures director, Halifax.

Mr Mike Lester: How are you, Mr Chair?

The Acting Chair: Well, thanks. Could you give us your official title, Mike, please?

Mr Lester: Certainly. I'm the executive director of emergency measures in Nova Scotia.

The Acting Chair: OK. So it's a provincial office?

Mr Lester: Yes. We're responsible for the emergency planning and the provincial 911 system. We're an independent agency of the province. We're not attached to a government department.

The Acting Chair: Right. Mr Lester, we'll allow you to make a presentation as long as you want, in terms of the background and the general jurisdiction you have and your general legislation. Then, time permitting, members of the legislative committee would like to ask you some questions. You may now begin, Mr Lester.

Mr Lester: Really, in the past five years, Nova Scotia has had to manage seven major emergencies. In September 1998, we had the Swissair disaster, flight 111. In September 1999, we had the Cumberland-Queens county flooding; in November 2000, the Cape Breton floods; in September 2001, of course, we had 9/11, with our 7,200 guests for about five days. In March 2003, we had province-wide flooding. In September 2003, we had Hurricane Juan, and then in February 2004, we had what we refer to as white Juan.

During this time, three local states of emergency were declared by municipal units, those being the September 1999 Cumberland-Queens county floods; the town of Oxford declared a local state of emergency, as they did during the March 2003 province-wide flooding. The Halifax regional municipality declared a local state of emergency in September 2003 for Hurricane Juan, and in February 2004 we had a province-wide declaration, the only one we've really ever had, to deal with the snowstorm, the 95 centimetres of snow.

1310

Our legislation is known as chapter 8 of the act of 1990, An Act to Provide for a Prompt and Coordinated Response to a State of Emergency.

I think it's noteworthy that the word "disaster" does not appear in this act. While a disaster as an emergency, an emergency is not necessarily a disaster. So in terms of the thinking here, things can be done in preparation for the event before it arrives, perhaps flooding, as an example. The event really hasn't arrived yet, but the declaration is made in advance.

Section 14 of our act describes the special powers provided under the state of emergency or a local state of emergency. I think it's important to note that safety is the primary consideration with these declarations. The ones that were declared were used primarily to control or prohibit travel; cause or order evacuation of people; authorize entry to buildings or upon land without warrant; cause or order demolition or removal of anything; and control prices. In each instance there certainly was a use for those authorities. Again, though, they weren't used for all of the major emergencies that we had. They weren't really necessary and the declarations were only done where there was obvious need.

The ability to evacuate people is perhaps the greatest asset to emergency managers and first responders, as it lessens the risk of loss of life or injury from two perspectives. Particularly in the case of seniors, they may refuse to leave their home or perhaps animals. I've had this personal experience myself as a policeman in my younger days. The thought that common sense prevails doesn't necessarily hold true.

The second issue here is, causing first responders to remain for extended periods in an evacuation zone while trying to convince people to leave can put the first responders at risk themselves. And of course, it also means that it takes more people to visit more residences if they're being tied up unnecessarily for long periods of time.

The restriction on travel is also a double-edged sword. There are those who will disregard warnings to stay off the road due to the weather conditions, become trapped and perhaps have to be rescued themselves while they block the road for ambulances, fire trucks and snowplows. Even with a state of emergency declared and travel prohibited, there are those who will ignore the order and usually complicate and delay the response activities. But you do win some with these orders. We did get a very good response from the public.

Civil rights must always be balanced in the response to a major emergency. Those events can overpower a community and there comes a time when exceptional measures are necessary to prevent the loss of life or injury.

I think it's noteworthy that while not everyone has approved of the course of action which emergency management officials have chosen during our states of emergency, no complaints have been received respecting civil rights violations. People caught up in desperate situations seem to accept that desperate measures may be required.

That, Mr Chairman, is my statement.

The Acting Chair: Thank you, Mr Lester. In terms of your legislation, you said it was based on a 1990 act and then it was amended recently.

Mr Lester: I believe the only amendments—no, I'm sorry, I don't think this was amended. It was the 9/11 act that was. New Brunswick recently amended theirs.

The Acting Chair: So you've had these powers to evacuate since 1990?

Mr Lester: That's correct.

The Acting Chair: And that means that a police officer or any designated official in an emergency can order an evacuation?

Mr Lester: Right. Of course the accountability goes back to the minister or the mayor, as the case may be.

The Acting Chair: Is there any recourse for oversight in case someone disagrees with an order to evacuate, for instance?

Mr Lester: Not at the time, sir.

The Acting Chair: As you mentioned, have those provisions been utilized by emergency officials in the snowstorms and hurricanes etc?

Mr Lester: Yes, they have, and I could perhaps provide some examples, if you wish.

The Acting Chair: Would you, please, because that's one of the issues we've been grappling with here. We in Ontario don't have the power to order an evacuation. We can recommend it, but I don't think we have the power to evacuate.

Mr Lester: We have other legislation that, for instance, enables fire chiefs to order evacuations under the fire act, where a fire is threatening somebody's home or somebody's life. Aside from that, there are issues such as, say, ammonia leaks and flooding, where there was no provision before this act came in. As one of the authors of this document back in 1990, it would probably be safe to say we robbed what we felt was the best from everybody who had the legislation at the time, but we haven't made any significant changes since then.

The points that I mentioned initially—control or prohibit travel—were of particular concern during Juan and during the snowstorm. There were those who could not accept that travel was impossible or extremely dangerous: wires down over the road that may or not have been live; the inability to travel down to the heart of Halifax during the snowstorm, and if you did get here, there was no place to put the vehicle when you got here. But people don't sometimes accept the warnings of emergency management officials and will give it a try anyway. So we used the state-of-emergency legislation in an attempt to stop people from moving about.

There were instances where people had trouble getting their money back from out-of-province travel agencies that didn't accept our state of emergency declarations as meaning anything and felt that the individuals should have gone to the airport. Well, if they went to the airport and our police agency said no, then they probably would have been charged.

The Acting Chair: What are the penalties? As you said, the police have the power to charge someone who violates that order. Do you have any idea what the penalties are for someone who does travel, for instance, when it's prohibited?

Mr Lester: It's pretty general. It's up \$1,000—it's summary conviction stuff, of course—or six months, or both, I believe.

The Acting Chair: Has that been utilized or invoked, or is just the threat of its happening sufficient?

Mr Lester: Generally, that's been the case. We've had specifics under raising prices. I'm not sure, sitting

here, whether any of the cases have gone to trial, but there were some really exorbitant prices being charged after Hurricane Juan. I recall that in one instance there was a price of \$3,000 quoted to take down two trees. There was another individual who was filling up gas cans at the regular price out of the pumps and then requiring another \$5 on top of that for his inconvenience for putting gas in his generator to make the pumps work.

1320

The Acting Chair: So under your legislation, people who are charging those extraordinarily high prices can be also charged?

Mr Lester: Yes, and that's province-wide. If the issue is, for instance, taking place here in the Halifax metro area and the resource is in Sydney and we want to bring it in, then it would apply outside the local state of emergency as well. In fact it was a specific incident we had that brings that to mind.

The Acting Chair: As you know, in Ontario we actually have none of the powers you've just enumerated in Nova Scotia, and a number of people recommended that we talk to Nova Scotia for this very reason.

We have another question from MPP Laurel Broten.

Ms Broten: Just filling in on the list of powers that you've indicated you have, do you also have the ability to undertake some kind of rationing of resources?

Mr Lester: Yes, we can do that. It covers pretty well the gamut here. I'm searching while we're talking; let's see if I can come up with the specifics on the thing.

Ms Broten: We have had other witnesses who have told us, for example, about the need to ensure an adequate supply of masks and medical equipment during SARS, gasoline during our blackout, natural gas potentially, the use of electricity—all the things we've encountered over the last few years that we may have gotten to a state in the province where we need to ensure that the supply goes to hospitals or other primary agencies first.

Mr Lester: Right. Our section 14(e): "... provide for the maintenance and restoration of essential facilities, the distribution of essential supplies and the maintenance and coordination of emergency medical, social and other essential services." That, I believe, would be sufficient, for us anyway.

Ms Broten: When your legislation was put in force, were there discussions or consultations with civil liberties associations or other constitutional law bodies with respect to the extensive nature of the powers being given to the state?

Mr Lester: Yes, there were, and there were public consultations. The municipalities were all involved in the design of the act, and it went to the legislative review committee—legal review. It went through. Surprisingly enough, there was very little discussion.

Ms Broten: Thank you very much.

The Acting Chair (Mr John Wilkinson): This is MPP John Wilkinson. I have a quick question. You say you're at arm's length from the government. What's your reporting structure with the provincial government? Are you an officer of the Legislature? Do you run this

through the Premier's office or through one of the line ministries?

Mr Lester: Actually, we're not at arm's length. I guess we're at arm's length from the department, but we're part of the public service and my immediate superior is a cabinet minister.

The Acting Chair: Which cabinet minister—the portfolio?

Mr Lester: It's usually moved around. Currently, it's the Honourable Ernie Fage, who is the minister responsible for economic development, but they frequently move the responsibility around to the minister they wish to give some additional powers to.

The Acting Chair: Do you have a fixed, separate command centre?

Mr Lester: Yes. We refer to it as the joint emergency operations centre. All three levels of government are in this facility, and we put this here three years ago. In fact, we opened it three days before the events of 9/11.

The Acting Chair: How fortuitous.

Mr Lester: Yes.

The Acting Chair: A further question from MPP Broten.

Ms Broten: Do you have a reporting structure whereby decisions made to declare an emergency go back before the Legislative Assembly in Nova Scotia?

Mr Lester: Everybody is of course subject to review after, but normally it is not a part of the formal reporting process. The decision is made by the minister in consultation with the provincial emergency activation team—senior executives from across the government—which is really his group of advisers.

The Acting Chair (Mr Mike Colle): A question from MPP David Zimmer.

Mr Zimmer: Now that you've had some years' experience with your legislation, which three areas in your legislation, on your wish list, would you like to improve by either amendment or new legislation?

Mr Lester: I think there's really only one area that I would personally like to see added, as New Brunswick has done—we're into this mutual aid situation across borders, as probably Ontario is with their neighbours—and it's the reciprocal recognition of professional qualifications. I'm thinking in terms of engineers, doctors, nurses, paramedics, what have you. This is, I guess, an issue across provincial as well as state borders. New Brunswick's new addition to their legislation permits the minister to recognize qualifications from outside the province during a state of emergency, should he wish to do so. At this point, that really is the only thing of significance I would see changing with ours.

Mr Zimmer: Just a follow-up to that question: What are the two or three things in your legislation that you think really work well for Nova Scotia?

Mr Lester: I think the onus we put on our municipalities as the pointed end of the stick when we come to emergencies has been significant. Of course, this is where the first responders are housed and where most of the assets to respond to an emergency are located. Sub-

section 10(1) of our act provides the duties of municipalities to have their emergency measures organizations, their plans, their coordinators, their committees of council. I think we're probably the only province that does it, but we do a report card on the level of emergency preparedness of all the municipalities in the province. We do this every two years, allowing for some budgetary considerations and getting things up to speed. It's an objective affair. For those who might wish to see that assessment—it's about 20 pages in length—it's available through our government Web site.

We do this, and the minister then sends formal correspondence to the mayor or the warden of the municipality, as the case may be, and that of course is read out in open council and is a matter of public knowledge. While there could, I suppose, be a threat of prosecution under the act for failing to do so, the reality of provinces charging municipalities is not one they'd really like to consider.

We consider this quite a stick, and it has been significant in the development of our process and has helped us to regionalize some of the smaller communities into one stronger body. We've done this in—I guess we're into four so far, and we hope to progress further than that. Realistically, it would be very difficult for the small municipalities to sustain a 24-hour, seven-day operations centre with the number of employees they have, because it takes three people to fill one job in an emergency operations centre.

We believe there's safety in numbers—strength in numbers, anyway—and we have been going that way with what we consider success.

1330

The Acting Chair: A question from MPP John Wilkinson.

Mr Wilkinson: Just a quick supplementary, Mike—you mentioned that the line ministry has kind of shifted around in Nova Scotia over the years. I don't know if you can answer this as a public servant, and we won't force you to, but if you had your druthers, which ministry do you think is the most logical one? Most provinces are doing it through municipal, because they vector this through their municipalities. Could you comment on what you think would be the best ministry?

Mr Lester: I guess my response would be, none of the above.

Mr Wilkinson: Why?

Mr Lester: Well, the independence we have here—we're seen as the honest broker within the government without any hidden agendas, the concept being that when the emergency happens, the government becomes EMO. Really, from our perspective, we have a direct line to the minister on a daily basis. There's a relationship there, and I think that has been helpful. When trouble occurs, the relationship has generally had an opportunity to be built up. Trust becomes a large consideration when you're into these things, that your senior bureaucrats are doing what they're supposed to be doing.

It's helpful in the process of getting policies, and what have you, put forward, and we're not competing with the

reaction demands out of a department. Many departments, of course, are regulatory. They have demands that come in, reacting to something that has happened outside. Virtually everything we do, with the exception of responding to the main event, is proactive. When it comes time to cut budget, usually the first things that go are the proactive things. That puts us at a distinct advantage, particularly when there are large reactive demands. So we're quite pleased with where we are now.

The Acting Chair: Thank you very much, Mr Lester, for your comprehensive presentation and a very thorough look at some of the measures you've implemented in Nova Scotia. I think a lot of them will help us greatly in finding out what gaps we have here in Ontario and how to best fill them. I think Nova Scotia has perhaps created an excellent benchmark system in emergency preparedness for us here.

Sorry for all the exercise you had to undertake to implement your strategies. Let's hope you get a bit of a breather after the number of storms you've had. On behalf of the Ontario Legislature and this committee, I would again say thanks very much for taking the time to speak to us today.

Mr Lester: Thank you, Mr Chairman. My pleasure.

POULTRY INDUSTRY COUNCIL

The Acting Chair: The next presentation is from the Poultry Industry Council. We have Deborah Whale, the chair of the Poultry Industry Council and vice-president of Clovermead Farms Inc. Deborah, you came from where to be here today? I'm not quite sure.

Ms Deborah Whale: I came from north Wellington county.

The Acting Chair: It's really appreciated that you've taken the time and have the interest to help this committee in this deliberation as we look at the Ontario legislation and statutes in regard to emergency management. Hopefully you can help us, especially with the agricultural sector and some of the pressures there.

You may begin with a presentation, and the committee will ask you questions.

Ms Whale: I'm going to present for about 15 minutes. I would like to thank you very much for giving me this opportunity. I was thinking, as I put this presentation together, that I have so much to say and so very little time to say it, because for the last four years I've been at the forefront of some very major industry initiatives that we have undertaken to improve our livestock and poultry industries' ability to prevent and to manage disease at the on-farm level. For all of those years we have been so aware of the impact of what we are doing, the impact on human health, on animal health and certainly on the health of the Ontario economy. But I don't need to say that over those years we have very often felt isolated and ignored as we tried to impress the importance of our efforts on various levels of government and institutions.

It's interesting now that SARS and BSE and, of course, the avian influenza outbreak in British Columbia

have turned the public's attention more, not just to public safety and public health, but I think public safety and health in relationship to zoonotic diseases, a term that many people don't know. Now that that attention has been turned toward zoonotic diseases, I hope it will continue and it will result in some really badly needed infrastructure reform.

What I want to do is to make three very important points and then I'm going to talk about the 10 priorities that I think are needed to be made by this government if we're ever to get a handle on the issue of zoonotic disease.

Point number one is to inform you that the livestock and poultry industries have come together to form a consortium which is very purposefully and methodically working to protect our livestock, our poultry, our consumers and a big part of the Ontario economy. Our consortium represents every single livestock and poultry group in Ontario. That should speak volumes to you about our resolve, because, as I said to Minister Peters a few weeks go, very seldom has the livestock and poultry industry ever been presented to you on a silver platter in agreement on this issue. Also, it should tell you that it's much easier for the government to partner with a united industry.

The second point I want to make is that we definitely face, and have faced, an uphill battle here in Ontario, because no matter how hard we work as a united industry, there are major shortfalls in the infrastructure in this province. We attempt to operate within those shortfalls and yet only the government can correct them, and the government must have the will to do this.

Just to expand on those shortfalls a bit, first of all, as Justice Haines pointed out in his report, we have a serious lack of laboratory capacity in the province of Ontario to do active disease surveillance and to do the kind of research that is needed into emerging diseases. By the way, there's an average of one new emerging disease every year in the livestock community. In the entire province of Ontario there is only one animal health lab and it is only a level 2 lab. This is an extremely dangerous situation, especially in the event of an outbreak of a highly virulent disease. This lab is poorly located. I'm sure that some of you have been there; you know where it is. It's in a busy building at the University of Guelph surrounded by students and staff and public, who can walk very close to it. It is too small, it is underfunded, and it has no capacity whatsoever to do what we call active disease surveillance. That means that if I have a dead animal on my farm and I take it down to the animal health lab and they determine what it has, that's called passive disease surveillance. In other words, I take something there; they depend on me to take something there. What if I don't? We need a lab that can actively go out into the field and look for diseases that are emerging.

As I mentioned earlier, it is only a level 2 lab. That is an extremely dangerous situation and it does not have the capacity to accept potentially virulent disease samples. Even Saskatchewan, for heaven's sake, is building a level 3 lab.

The second infrastructural concern is that our provincial veterinarian has absolutely no powers under legislation to ensure that he can act effectively to protect the livestock and poultry in Ontario. Some time ago, a group of us representing both industry and government and including our provincial veterinarian, Dr David Alves, went to North Carolina to look at what is arguably one of the best-protected livestock and poultry areas in the world. We were fortunate enough to meet with their chief state veterinarian and he spoke one-on-one with our chief provincial veterinarian. To say the least, he was shocked to learn how very little ability Dr Alves has to act decisively to prevent or to control disease in Ontario.

1340

The third infrastructure problem: Ontario, as I'm sure you know, stands alone in this entire country in not having animal health legislation. That means a whole lot of things but, to be brief, it means that in the event of a disease outbreak in a neighbouring province we do not have the legislative ability to close our borders to animal movement. We do not have an organized early warning system to let us know what's happening out there in the field. We do not have specific policies to deal with carcass disposal in the event of mass mortalities, and we do not have provincially established biosecurity standards on all livestock and poultry farms. We most certainly do not have zoning policies to attempt to mitigate some of the ramifications across the province in the event of a disease outbreak. So for all of those reasons and more, we are arguing that we need effective animal health legislation.

The fourth infrastructure problem is that over the last few years Ontario has consistently reduced funding to many of those parts of the infrastructure which would have ensured better health monitoring and better health protection for all of us. So I suppose the question is, is this finally a wakeup call or will we continue to talk a lot and do very little?

I said that I was going to make three points. My third point is one which I hope leaves you feeling incredibly positive about what you're doing and which will give you a big ray of sunshine, but should inspire you to think that this government is not working alone but in fact you're building on a tremendous amount of effort that's already taking place within the agricultural community, livestock and poultry. Our livestock and poultry industries in Ontario have been taking some very effective measures over the last few years to deliver to you and to the rest of Ontario a better-protected and a better-coordinated industry.

As I mentioned earlier, one of those things is that we have formed a consortium representing virtually all of us, and we have put together three working groups. What we're doing is examining health legislation in the other provinces in Canada, across the US, and into Australia to look at what can be best applied here in Ontario.

Another very important action which the livestock and poultry industry has taken is that all of the major groups—that is, dairy, poultry, beef and pork—have met

and are continuing to meet to discuss the coordination of our current GIS—geographic information system—under one umbrella data bank. You can see how important that concept is if we have all of that information stored in one place when it comes time to release it in the case of an emergency: It can happen like that. We are currently applying for federal funds to help facilitate a business agreement between all of the organizations.

A third thing that's being done in the poultry world—remember, there are four poultry boards, not all of which have always co-operated together on things, but these four poultry boards have come together under the auspices of my Poultry Industry Council and a lot of work has been done in a number of areas, including hazard-based biosecurity and food safety initiatives on-farm. We're currently putting the touches on a massive effort to write standard operating procedures for the poultry boards, poultry producers and all of the input companies, such as feed and catchers. We're aiming to have this completed by October. In October—in fact, the 27th, 28th and 29th—we're going to be holding a disease simulation exercise. It's actually breaking out in north Wellington. Beyond that, I don't know what's going to happen, because there's a planning committee. But it is going to be observed by all of the other commodity groups. We also are using the resources of a very well-known American epidemiologist who is going to be there with us for the three days to assess how effectively we reacted to the emergency, and then, November 9, at our annual health conference, he will be letting you and the rest of the world know how well or how poorly we did.

August 31, which is just a few days from now, we are also hosting a very large conference and expecting people from all over the country to look at the avian influenza outbreak in BC—what went wrong out there. We need to find out so that we can apply the lessons learned here in Ontario. You are all invited, and in the package of information I left with the clerk there are invitations to August 31.

Before I make my conclusion, which is the 10 priority items I spoke about earlier, I would just like you to keep one thing in mind as you work through this issue—particularly southern Ontario. Southern Ontario is a rather unique environment. We have millions of people living in very close proximity to millions of head of livestock and poultry. We do that in a small geographical area, and just across the border are some very intensively farmed American states. This is a unique situation and it is ripe for disaster if we are not prepared.

I do not think that we can any longer afford to put off doing something about the infrastructure that is needed to protect both human health and animal health, to say nothing about the Ontario economy.

As clearly as I am capable of expressing myself, I want to summarize for you what we see as the 10 key needs for Ontario, and I've left this in printed format for you.

Priority number 1, and this is crucial: As you work toward creating emergency management authority in

Ontario, I would like you to visualize what I call a disease triumvirate. We know now that we have a new post, Ontario's Commissioner of Emergency Management, Dr Jim Young. But he's just part of the picture. Another part of that triumvirate, of course, is Ontario's chief medical officer of health, Dr Sheela Basrur. A third and too often ignored component of that triumvirate must be Ontario's chief provincial veterinarian, Dr David Alves. This gives the system the kind of balance it needs between human health and animal health. No one who does not understand agriculture can possibly make the decisions around this industry which will be effective. Agriculture simply must have a voice at the helm of emergency management in Ontario or the system will not be effective. Even a cursory examination of the disasters that occurred around foot-and-mouth in Great Britain and avian influenza in BC underlines that point very clearly.

Priority number 2: We need to develop comprehensive animal health legislation backed by the dollars that it will require to ensure that Ontario can take its effective part in a national disease mitigation strategy.

What I'm saying next is very important: Whether this is stand-alone animal health legislation or whether it is a large component of a broader emergency management package is not the issue. I know that both have been discussed. It is not an issue just as long as it gets written, funded and acted upon. Of course, that animal health act has to coordinate with the federal Health of Animals Act.

Priority number 3 is to build a level 3 animal health lab in Guelph. This is to ensure, obviously, that we can do active disease surveillance out in the field, but also the necessary investigations and research into emerging pathogens and the capacity to test emerging zoonotic diseases and prion-related diseases.

Priority 4: Develop for Ontario—and I underline in consultation with the livestock and poultry industries—a comprehensive mass carcass disposal contingency plan. This is crucial. On my farm alone I have hundreds and hundreds of very large animals. If all of them had to be shot tomorrow, what is my plan to deal with the carcasses?

One of the things that we found out in terms of disease spread is, under the best circumstances, the last thing on earth you want to do is cart diseased carcasses off the farm. Far better to compost and manage those mortalities on the farm as often as possible.

1350

Priority number 5: Develop, in conjunction with the livestock and poultry industries, a biosecurity strategy for livestock, poultry and meat products. As I've indicated, there are good biosecurity policies in many of the large commodity groups already, but we need a standard one across the province.

Priority number 6: Develop the necessary resources to ensure adequate and ongoing disease surveillance, testing and reporting, and that means effective early warning system for disease. Catch it before it gets out of hand.

Priority number 7: Financially assist all of those ongoing efforts that I've already explained to you that industry is in the throes of doing.

Priority 8: Develop an Ontario emergency veterinary network. Not for a minute does one exist in this province. I'm appalled to say that veterinarians have been very slow to uptake what industry is doing. We have meetings scheduled in September with the two major veterinary organizations. We also work very closely with commodity-specific organizations such as the Ontario Association of Poultry Practitioners etc, but we need to look upon veterinarians as our protection in the event of an outbreak. If those veterinarians are not trained in emergency response—and they are not even close to being trained in emergency response right now—then we are going to have trouble.

Priority number 9: Reinstate the requirements for livestock medicine certification for all livestock and poultry farmers. It is beyond me why we got well into that certification process and then all of a sudden it was stopped. I have back there in my wallet my own certification, which I took almost two years ago now. It needs to be reinstated and every one of us needs to have that certification.

Priority number 10: Develop a zoning policy to ensure that in the event of a foreign animal disease outbreak, not all areas of Ontario would be impacted adversely. Certainly there are initiatives going on at the federal level to look at zoning in Canada, but I think a province this size also needs to look at zoning within Ontario.

That's the end of my presentation. I'm certainly prepared to answer any questions you might have.

As you move forward in your deliberations, we have amassed a lot of material, needless to say, over the last four years. Anything that we can provide for you, any assistance that we can give to you, we would be very glad to do so through the Poultry Industry Council.

The Acting Chair: I have a question from MPP John Wilkinson.

Mr Wilkinson: Deborah, thank you so much for coming today. I can share with the committee that Deborah really has been a lone voice in the wilderness. Finally, the province is starting to pay attention to this because of the things she feared were going to happen in Ontario that have actually already happened in other jurisdictions. So it's not a question of theory any more.

Zoonotic diseases, for example, like SARS, have gone right around the world. We have problems—for example, our neighbours in British Columbia have had to deal with this avian influenza and millions of birds had to be destroyed there—and the economic impact on this province, so from an economic point of view and from a public health point of view.

I think the advice she is giving should be incorporated in our report, because if we're forward-thinking, we have to anticipate those crises that this legislation or this review is going to have to deal with.

Deborah, I went to one of your earlier presentations. You've had one of these simulations before and now you have a major simulation. Can you give us an idea of the lack of coordination of jurisdictions? Right now, if a farmer were to discover ill livestock, there is no require-

ment that they report it, right? You hear the guys out in Alberta saying, "I wish I'd taken that cow with BSE out and just shot it and not reported it."

So we have that fear, that we don't have a situation, and then there is the whole question of the veterinarian showing up on the farm and what does he or she do? Do they leave the farm? Do they stay there if they fear there is an outbreak? How long does it take for test results to come back? Who do you call to try to nip one of these problems in the bud? Could you just run through your previous simulation and some of those areas that you found of major concern?

Ms Whale: We've done two smaller simulations leading up to this large one that we have coming up in October. The first one was done very specific to the poultry industry, and it involved only the 24 poultry veterinarians that exist in the province of Ontario. They were stunned at what they found that day.

Let's just say that I had some large mortalities in my chicken barn and I called my poultry veterinarian and he came out there. What are his options? Let's say he utilizes the option to take some live birds down to the animal health lab and present them for testing. He puts the birds in the back of his trunk—and this is very common; this happens every day—he drives down there, stands in the public hall, passes them over the counter, and they go in for testing. Let's just say it turned out to be high-path avian influenza. That's a reportable disease. It's also highly virulent. In the meantime he's got it all over him, all over his trunk, the wheels of his car, and all over the public entranceway to the animal health lab. Remember, this is only a level 2 lab; it's really not set up to test highly virulent diseases. So already we've got an outbreak situation right there.

Back in July we had, as you know, a potential outbreak here in Ontario. The interesting thing about it was, that very day I happened to be with a group of industry people down making a presentation to Jim Young's committee. We walked out of the room and the chief veterinarian said to me, "Just a minute; it sounds like there might be an outbreak down in Niagara." So it was kind of interesting the way it all turned out. But the fact is this: One of the things that happened that day, in spite of all our warnings about how we need to get prepared for a disease outbreak like that, was that the CFIA decided they would not tell the industry where the outbreak occurred. All they would say was that it's somewhere in the Niagara Peninsula. We have our phone trees out now and it's all very well organized, and we phoned the entire industry and said, "There's a potential AI outbreak in the Niagara Peninsula but we don't know where it is." So company after company, board after board pulled their people out of the entire Niagara Peninsula. Two hours later we learned on the news precisely where it was.

One of the things we said in our debrief to the CFIA and OMAF was, "You've got to do better than that. If you keep this crucial information from us, we cannot do our part to contain what could have been a disaster."

So we have a lot of holes to fill, and while we work toward filling them it means testing the system over and

over again, plugging those holes each and every time we do it. That is why we've geared up for a big one in October and that is why we have an American here looking at what we're doing, because they've gone through it for real, over and over again down there. We expect to get some very good feedback from October.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Thank you for the excellent presentation. It's a real eye-opener.

With regard to the lab, you made comment that it is a level 2 lab now, and you gave the scenario of a farmer arriving at that lab. At a level 3 lab, what is there that would enhance an opportunity for Ontario farmers?

Ms Whale: What a level 3 lab does is just enhance the biosecurity in the actual lab itself. For example, I have a son who's doing a PhD in biochemistry and he works in a level 3 lab. The ventilation system, for example, is designed to catch viruses, whereas at the University of Guelph in its level 2 lab the ventilation system lets a lot of things out in the air. They take a great deal of caution, for example, in incinerating potential virulent disease samples or even animal carcasses. At the University of Guelph their incineration system leaves a lot to be desired. What it is is an enhanced lab system.

1400

There is a level 4 lab in Winnipeg. It is the highest lab containment level that exists. So in the case of a reportable disease, and there are 38 of them now—and by the way, 18 of those 38 are zoonotic diseases—once a sample is taken, while it can go to other labs, the final authority is the level 4 lab in Winnipeg. So that is one more reason why we need a level 3 lab in Ontario.

I mentioned the potential outbreak in July. One of the decisions made at that time was to take duplicate samples of the dead birds. One set of samples, of course, was sent to the Winnipeg lab because it was potentially an AI virus—and, by the way, it turned out to be nothing. One set of samples was sent to the level 2 lab at the University of Guelph. That's very good because it gave us a 24-hour advance notice, "Not to worry; this does not look like high-path AI." It was another 24 hours before we got the final test results out of Winnipeg. So that part of it is good, but what if it had turned out to be high-path AI being looked at in a level 2 lab? It could have been—it wasn't, but it could have been—a recipe for disaster. So the importance of level 3 is very clear.

Ms Broten: I just wanted to get some clarification as to which groups were part of your consortium. We at this committee had talked about having some of the other folks from the agribusiness community come and talk to us—the cattlemen's association etc. I just wanted to get some clarity on who has participated in your discussion groups.

Ms Whale: All of them—everything from the Ontario Cattlemen's Association, Dairy Farmers of Ontario, chicken producers, egg producers, broiler, hatching—there are 12 of them altogether. We have a list, which I think I left you in my presentation.

I know, for example, that on Thursday you're hearing from Chicken Farmers of Ontario, and certainly there's

no reason not to hear from all of the various commodity groups because they'll have plenty to tell you about the specific measures they take within their commodities, for example, concerning on-farm biosecurity or HACCP-based food safety programs, their own particular GIS systems. All of those are very specific to each organization.

The consortium itself is all of those organizations together, working, quite frankly, to lobby for improved animal health legislation and also to pull ourselves together in terms of coordinating some of our efforts, particularly as they pertain to GIS systems.

Ms Broten: And have all those organizations passed through their protocols, I guess—whoever has to make decisions—to provide support for the position you've put forward before us today?

Ms Whale: Yes, and there are formal letters from each one of those organizations that were sent to the Ontario government through Steve Peters indicating their support of what we're doing.

One of the things that I included in my package was this brief about the need for an animal health act in Ontario. That brief has been made to each one of the commodity boards in Ontario, and each one of them has signed on to this. So now what we're doing is pulling these groups back together again. We've set up three working committees and we now move toward trying to make this come to be, and really, what is in here is essentially what I've said to you.

You'll also probably notice a fair bit of overlap in what we have said with what Justice Haines has said. His report has come out fairly recently, so of course the first thing we did was read it, and it was very interesting how much overlap there was.

The Acting Chair: I just would like to add that I would like on behalf of the committee to invite Dr Alves, the chief veterinarian for Ontario, to appear before the committee at his convenience. Also, if any member of the committee wants to attend the conference in Kitchener on the 31st, they're more than welcome to do so, and travel expenses to Kitchener will be reimbursed, if the committee agrees. I think it's important. If someone has the chance to go there on August 31, I think it will be an interesting conference.

I just want to say that it's a most impressive presentation you've given here. It's almost too much to digest right now, Deborah. As you mentioned in your presentation, the question for this committee is whether we take the most cogent or critical parts of the measures needed and incorporate them in a new emergency measures statute or whether some other ministry takes over. It seems here that we have multiple components of legislation that's required, whether it be the Ministry of Agriculture or—I'm not sure whether a ministry would be involved. Certainly I would hope that our committee can at least take the most critical parts of your presentation and deal with them.

I was struck by your comparison to North Carolina, where they demonstrated the gap between Ontario and

North Carolina. The fact is that our chief veterinary officer has very little power, if any.

I think we as a committee have some excellent directions that you've given us that we may be able to incorporate. I think the committee has demonstrated a willingness to take action here. With the BC example, you've shown what can happen if we don't have a sense of urgency. I think you've heightened our sense of urgency—certainly mine—in your explanation of the impact of zoonotic diseases on society as a whole.

You've done an amazing amount of work. Are you a veterinarian by trade?

Ms Whale: No, I'm not.

The Acting Chair: Where did you get all this technical knowledge?

Ms Whale: When you're buried in it for four years, you can't help it.

The Acting Chair: You have an amazing amount of expertise in this area. Do you have any idea of the potential cost of raising the lab in Guelph from a level 2 to a level 3? Has that been given a general cost estimate?

Ms Whale: Of course, it depends on how big you want to make it. I know for a fact that the money being expended in Saskatchewan is approximately \$60 million. I know that's a lot of money, but do you know what? This industry is worth billions of dollars. I don't think we can put a price tag on human health. I think that's the price we pay for ongoing surveillance and research.

I haven't even had an opportunity to talk to you about that component of it, but we are doing some amazing things. One of the so-called "jobs" I do for this industry is raise funds for research. We have put together the most amazing poultry research team at the University of Guelph, with a concentrated focus on high-immune-response animals. While that's a longer-term effort, it's an effort we all have to look at very seriously, because animals are becoming more and more susceptible to disease as more and more pathogens emerge, for a whole variety of reasons. When we can create—and you'll notice I didn't say "if," because I think we've done it in pigs—a high-immune-response animal, we will have decreased our dependence on medications, we will have increased the uptake of vaccines and we will have ensured ourselves of animals that are far less susceptible to disease than they may be now. That's just one more little part of the picture that I didn't have time to paint.

The Acting Chair: Just in terms of your references to the need for animal health legislation and this committee's attempt to come up with something that deals with the whole spectrum of emergency management statutes, or maybe one statute that fills the gaps, could you give some time and thought to two or three areas that we as a committee could hone in on? All these things seem pertinent and extremely necessary. But over the next week or so, could you give some thought to two or three areas that might be pointed toward our objective of dealing with emergency crisis management and what we could possibly focus in on as a committee, given the fact that we're probably going to be restricted in terms of our

overall objectives here in this area of zoonotic diseases? You've mentioned the health lab. You've mentioned more powers to the chief veterinary officer. You've mentioned those four major things.

1410

If you could give that some more thought, John Wilkinson, representing one of the most rural agricultural ridings in Ontario, would be more than happy to follow up on that and he'll report back to the committee, just to give us a bit of direction there. I'm just trying to think of the doables, given the time frame. We have until November 1 to come up with draft legislation. So we'll get back to you on that. If you could exchange some of your thoughts on that, that would be very helpful for this committee, I think.

Ms Whale: All right. I will definitely do that, but think hard about what I said about priority number 1. That disease management triumvirate, to me, is crucial. Even if one person is more in charge than the others, we can't afford not to have a strong voice for agriculture sitting right there at the top.

I have to tell you that when I made that presentation to Jim Young's committee, there was a large group of people. There had to be at least 20-some people in the room and they represented five different ministries, I believe, and they have been meeting for some time. That was the first time Dr Alves had been invited to that meeting, and he wasn't sitting around the main table; he was in the corner. That spoke volumes to me, and I think it's a serious oversight.

The Acting Chair: We asked Dr Young or whoever made the presentation, or one of the ministry presenters, who is the chief veterinary officer of Ontario and do we know his name? I think that's the first time any of us knew there was such a position. That's why I think it's important for him to come out of the corner and appear before this committee.

Ms Whale: I do too. He's a quiet, shy man, so you have to pull it out of him.

The Acting Chair: We'll do that. David Zimmer?

Mr Zimmer: Are there other jurisdictions in North America—in the US or in Canada—that have a role for a chief veterinarian?

Ms Whale: Yes, virtually all of them.

Mr Zimmer: Ontario being the exception?

Ms Whale: Absolutely.

Mr Zimmer: In Canada also?

Ms Whale: Yes. Just to go back to North Carolina again, because they have a system down there that just makes you want to weep—

Mr Zimmer: For good?

Ms Whale: Yes, for good. They're just amazingly efficient and effective. If the chief state veterinarian there sees a potential outbreak occurring on your farm, he can make the decision right there on the spot to quarantine you and to set up an emergency zone. He informs the governor of the state of what he has done. Our chief provincial veterinarian will tell you that he has at least

eight layers to go through. That's impossible. You can't do it.

Mr Zimmer: Thank you.

Mr Wilkinson: Just quickly, with what happened in British Columbia, some of the things I've read anecdotally, there hasn't been a full debriefing of what went right and what went wrong like we've been doing here. That whole economic disaster could have been mitigated substantially—

Ms Whale: Yes.

Mr Wilkinson: —if they had been able to jump on this at the source farm, like at ground zero, and get a hold of this right away. It is a huge industry there. Deborah, you would probably know more from the example of British Columbia of where things fell down.

Ms Whale: There were some major disasters out there, and not the least of it was that because this was a zoonotic disease, instantly public health—human health—officials take over. They messed up what should have been done in agriculture, and that's why I say we need an agricultural voice there, making those decisions as well.

I could list some of the disasters that occurred, but interestingly, as we put together our agenda for August 31—of course, we invite CFIA and OMAF to sit on all of our boards and committees. Nothing is done in secret, believe me. Last June, after the outbreak in BC, CFIA convened a debrief. They were down as speakers for the August 31 agenda. They called me in July and said, "We want you to cancel August 31."

I said, "Why would I do that?"

"Because we are not ready."

I said, "You did your debrief in June. You are ready. You already know, as well as I do, what went wrong."

Well, they still weren't ready. But the point is that it could happen here tomorrow. We can't always not be ready.

So I said, "We will not cancel it. This is an industry initiative. We're not using anybody else's money but our money. It will go forward."

Now, CFIA sort of backtracked a bit and they're back on the agenda, but it will be extremely interesting to hear what they have to say. Nevertheless, it won't matter, because we have veterinarians—

The Acting Chair: Excuse me. Could you just put on the record what CFIA is?

Mr Wilkinson: Canadian Food Inspection Agency.

The Acting Chair: OK.

Ms Whale: We have veterinarians and producers who will be speaking at that meeting. There is one person from the BC government who, if she holds true to her word, is going to speak out loudly and clearly. So it will be very interesting, I think.

The Acting Chair: So the CFIA is the Canadian Food Inspection Agency?

Ms Whale: Yes.

The Acting Chair: They're going to be half ready, I guess.

Ms Whale: I guess. We'll see.

The Acting Chair: David Zimmer.

Mr Zimmer: Just coming back to the eight layers the vet has to go through. Can you walk me through those eight layers?

Ms Whale: No, I couldn't. I think only David could walk you through them. But the thing is, you can't go through eight layers and make a decision that has to be made, because we figure that experience in jurisdiction after jurisdiction where there have been outbreaks has told us that if you do not contain it in the first four to six hours, it's literally gone.

The Acting Chair: I think we are certainly a lot more aware of the urgency of animal health as a result of your presentation. Hopefully your coalition can help us, as a committee. We will be putting together a report, and we will also be putting forth draft legislation that has to go through the democratic processes here. We hope we can continue to elicit your co-operation as we go through this, because I think the committee is beginning to understand more and more the urgency that is before us in terms of protecting Ontarians' health. Zoonotic dangers are much more focused for us as a committee than they were before. It's been brought up a number of times, and you've really articulated it in the most comprehensive way. Again, Deborah, on behalf of the committee and the Legislature, I'd like to thank you for such an impressive presentation.

Ms Whale: Thank you very much. We'll be in touch.

The Acting Chair: We'll now recess until 3 pm, when we have the nuclear energy regulators. The Canadian Nuclear Safety Commission will be coming in by teleconference at 3 pm.

The committee recessed from 1418 to 1506.

CANADIAN NUCLEAR SAFETY COMMISSION

The Acting Chair: Good afternoon, ladies and gentlemen. We're here to reconvene our afternoon session. On the line with us from Ottawa is Mr André Régimbald, the director of technical services division of the Canadian Nuclear Safety Commission. Welcome.

Mr Régimbald, just to let you know, we are a committee that's been given the mandate to review existing emergency management statutes in Ontario with the view of writing a report and legislation on these various issues dealing with emergency management. So we are more than happy to have you with us by teleconference this afternoon from Ottawa. We have a format where you can give a presentation of 10 to 15 minutes, giving an overview of your responsibilities and your mandated emergency preparedness, and then members of the legislative committee will ask you questions.

Mr André Régimbald: Good afternoon, members of the committee and ladies and gentlemen. My name is André Régimbald. I am the director of the technical services division. Currently, I am the director responsible for the CNSC nuclear emergency management program. With me this afternoon I have Mr Michael Callighen,

who is one of the nuclear emergency management program officers working under me.

I assume that a copy of my presentation has been distributed to the committee members.

The Acting Chair: Yes, we have copies. Thank you.

Mr Régimbald: So we will start. If everybody turns to slide 2, I'd like to talk about the legislative basis first, a little bit about the act and mandate, and also the emergency act. Then I'll touch upon nuclear emergency management per se, explaining our role and responsibilities if there is a nuclear emergency. There's a short conclusion and a period for questions.

Please now turn to page 3. I'll start with the legislative basis. The CNSC's legislative basis is essentially entrenched in the Nuclear Safety and Control Act—this is a federal act—but also the CNSC has obligations under the federal Emergency Preparedness Act. How does the CNSC mandate conciliate roles and responsibilities under both acts?

Turning to page 4, starting with the Nuclear Safety and Control Act, the act was passed in 2000 although it was replacing an older act, the Atomic Energy Control Act, which was passed in 1946. The new act, NSCA, is a more modern act which outlines the objects of the commission and purpose of regulating nuclear energy in Canada. Basically, its purpose is in general twofold: First, the act is there to provide a framework, a legislative basis, to limit the risk to national security, health and safety, and the environment associated with nuclear substances and prescribed equipment. Also, the other purpose is to implement in Canada international measures of control with respect to nuclear energy that Canada has agreed to.

Moving on to slide number 5, the Nuclear Safety and Control Act applies to all persons in Canada, including Her Majesty in right of Canada or a province. It does not apply to nuclear-powered vessels that are invited to Canada. Also, it does not apply to the Department of National Defence; they are covered under a special exclusion order.

Turning to page 6: the CNSC mandate is, first, to regulate nuclear energy, nuclear substances, prescribed equipment and prescribed information. The nuclear substances and equipment are, for example, nuclear power stations in the provinces of Ontario, Quebec and New Brunswick. There are also uranium mines located in Saskatchewan, and there are fuel fabrication facilities located mostly in Ontario. Also, there are nuclear research laboratories, medical applications of radioisotopes, industrial applications as well, radioactive waste management. These are essentially the areas of activities that we regulate.

We also implement measures of control and international obligations for the peaceful uses of nuclear energy. Canada is a signatory of the nuclear non-proliferation treaty, so we have agreed to international measures to be implemented in Canada with respect to the peaceful use of nuclear energy.

Third, our mandate is to disseminate scientific, technical and regulatory information to the public on our

activities and also on the effects of nuclear energy and nuclear substances on persons and the environment.

The next slide, page 7: The federal Emergency Preparedness Act's purpose is advancing civil preparedness in Canada for emergencies of all types by facilitating and coordinating the development and implementation of civil emergency plans.

The Emergency Preparedness Act finds all the federal crown corporations and ministers and it imposes obligations on ministers to develop civil emergency or civil preparedness plans in the areas of their interests. For us, obligations on the CNSC under that act are that we need to identify the emergency contingencies that are within our mandate, our area of accountability, and develop an appropriate civil emergency plan.

Just in parentheses, we are an independent organization, an independent federal agency. We do not report directly to Parliament but we report via the federal Minister of Natural Resources. So our act identifies the minister as being the Minister of Natural Resources and it is our obligation through that way that we abide by the Emergency Preparedness Act.

Moving on to page 8: Nuclear emergency management at the CNSC means that we see it as an integral part of protecting public safety, security and the environment. We have a vital interest in the effectiveness of nuclear emergency preparedness and response in Canada. Therefore, we have two roles in nuclear emergency management. We have our role as a regulator and we also have a role of responding to an emergency, and I'll go into the details.

Turning to page 9, talking about the CNSC role as a regulator: First and foremost, we verify compliance of licensees' emergency preparedness and response plans. So as part of our licensing activity, we look at licensees' emergency preparedness plans and, once we are satisfied with those plans, we approve them and they become part of their licence. They have to comply with that plan when there's an emergency. Our job is to verify compliance with those terms.

We also need to verify compliance with other regulatory requirements in the NSC Act, in regulations and also in other licences.

Thirdly, we need to verify compliance with international obligations that are imposed upon us.

We ensure that actions taken by any person, including the licensee and those who are involved in responding to the emergency, are appropriate to, limit risks to a reasonable level.

Finally, an important role we have is that we convey and disseminate information about the emergency to the public.

Turning to page 10: As a responder, we implement our nuclear emergency response plan in accordance with the scale of the emergency. In other words, we devote the right amount of effort in response to the kind of emergency. We would certainly devote a lot of effort if, for example, there is a major incident at a power reactor station. Inversely, at the other end of the scale, we would

probably assign just a few staff to respond to a minor incident.

The second role we have is that we manage our CNSC emergency operations centre as required.

The third role, which is a very important role, is to assist federal and provincial authorities in coordinating emergency activities. The way it functions is, if there's an incident occurring at a licensee's site, the primary responsibility for dealing with the emergency is with the licensee. The licensee is primarily responsible for all safety aspects and making decisions and engaging in emergency actions at the site. If there is a possibility or potential for an off-site leak, the licensee contacts the provincial authorities, the emergency management organizations, and then the province would take charge in deciding what kind of action to do in response to the emergency. If it goes beyond or if the province needs assistance from the federal department, they would phone the national support centre and the federal nuclear emergency plan would kick in. Currently, Health Canada is the federal lead department to execute the federal nuclear emergency plan, but the CNSC and other departments participate in the plan so that we offer a co-ordinated response to the problem.

Moving on, we also provide scientific and technical advice to federal and provincial authorities and to first responders to assist them in dealing with the emergency. This technical and scientific advice would be mostly in the area of radiation protection.

Lastly, we also provide on-site technical field support as needed.

Moving on to page 11: During a nuclear emergency it's important to keep in mind that our role as a regulator does not diminish. In other words, we don't leave the powers of the act behind. The Nuclear Safety and Control Act exists at all times and applies at all times, and the powers of inspectors and designated officers under that act are unchanged. So inspectors do retain the authority to enter and inspect locations where they believe there might be a nuclear substance. They can take measurements, take samples, and they can issue orders if they feel the situation warrants those.

Also, a section of the Nuclear Safety and Control Act allows the CNSC to make emergency orders where circumstances warrant them.

1520

Moving on to page 12: Another important area of activity is coordination and co-operation. Our plan aligns with national and international obligations and expectations. As I mentioned, we need to align our emergency response plan with the federal nuclear emergency plan under the leadership of Health Canada. We also partner with the other federal and provincial departments and agencies through memorandums of understanding. We have to respect any international conventions that are established, and I put in parentheses here "IAEA," which stands for International Atomic Energy Agency. Canada has signed a few agreements in the area of emergency response. Finally, we have agreements with our Amer-

ican counterparts for events that may occur along or close to our border and which may have an implication on the Canadian side or the American side.

In conclusion—page 13—the CNSC implements its nuclear emergency management response plan to the scale of the emergency. We coordinate our emergency response activities with the licensees and other federal, provincial and foreign organizations. We maintain our regulatory role and authority under the NSCA, but also we do have a responder role to play. Finally, we disseminate information to the public in accordance with our mandate.

That concludes my presentation. Mr Callighen and myself will be more than happy to answer any questions that the members might have.

The Acting Chair: Thank you very much, Mr Régimbald. We'll have questions from the committee. We'll start with MPP Wayne Arthurs from Pickering-Ajax.

Mr Arthurs: I'm going to ask if the delegation would turn to page 11 of their slide deck. Under the emergency powers that may be used under NSCA 47, could you provide a little enhancement? What's the scale and the nature, and how extensive are the emergency powers that the commission can undertake in protecting the environment or health and safety of persons? What range of activities would be envisioned or available under that particular provision of the act?

Mr Régimbald: This provision is intended for very extraordinary situations and circumstances. If I can point to the example that was used in 2001 after the September 11 attacks in the US, the commission members met and decided that extra security measures had to be taken at Canadian nuclear power stations. For the first time, section 47 of the act was used to order these special measures. So you can understand that those were extreme circumstances that required the emergency powers under that provision.

Mr Arthurs: Would the provision allow for activities off-site to a nuclear facility under this particular part of the act?

Mr Régimbald: Yes, the act applies anywhere in Canada, and where the commission considers it necessary in the interests of public safety that an emergency order should be made, then it wouldn't hesitate to do so. But again, the circumstances would have to be extremely out of the ordinary and would have a sense of immediate urgency and life-threatening circumstances and criteria.

To answer your question, yes, it could apply to anywhere, any circumstances, any situation that would occur in Canada.

The Acting Chair: The next question is from MPP John Wilkinson from Middlesex.

Mr Wilkinson: Good afternoon. As I look at this as a layperson, it seems to be unlike other emergencies that we've been dealing with. There just seem to be so many different layers of jurisdiction: municipal, provincial, federal, international. My question is, do you run simulations about the potential for a nuclear emergency? Do

you have the resources to actually run these types of scenarios and try to see whether you would run into these kinds of jurisdictional problems of who does what, and therefore establish the kinds of protocols that will allow all levels of government to work seamlessly in this type of emergency?

Mr Régimbald: Yes, we do conduct regular exercises. Perhaps I'll let Mr Callighen summarize the context and explain to you how these exercises are run.

The Acting Chair: Before he begins, could Mr Callighen please spell his name? This is being recorded in Hansard.

Mr Michael Callighen: My name is Michael Callighen, C-a-l-l-i-g-h-e-n, and I work with the CNSC's nuclear emergency management program.

There are several levels to the way we simulate emergencies. The most basic or simplest is what's called a tabletop. It's just a paper exercise more than anything, and usually tests things like lines of communication and so on. We tend to start at that level and work our way up to major events; you can go as far as international, which we do participate in as well.

The various types of scenarios usually don't come from us. They come from either licensees or—in fact, we're involved in an exercise with the province coming up in the fall, and it's initiated by the province. We test our plan against other plans to make sure they fit together and that we are coordinating with not only the province, in this case, but with other federal departments. Some exercises involve federal-level responders, and others don't involve them at all, but we're there monitoring as the regulator.

Mr Wilkinson: You're dealing with all the different provinces that have nuclear facilities or the potential for you to be involved, and we're grappling with how Ontario is prepared, versus other jurisdictions throughout the world and particularly in Canada. We're trying to identify gaps that need to be filled. Would you be in a position to comment and give us advice if you feel the province of Ontario has gaps that need to be filled?

Mr Callighen: I'm not really in a position to comment on the quality of any of that sort of thing. But the types of exercises we're involved in today are starting to reflect the situation of the world. Regarding the real operational kinds of things we've been prepared for in the past, like breakdowns of equipment and so on, I think Ontario is as well-equipped as anybody. But it's now the world of terrorism, so we're starting to look at some more extreme types of scenarios. Obviously they're very unpredictable and very difficult to be 100% prepared for. But from an operational point of view, I think Ontario is as well-equipped and prepared as anybody.

The Acting Chair: Mr David Zimmer, MPP for Willowdale, has a question.

Mr Zimmer: On page 12 of your slide deck, "Co-ordination and Co-operation," there's a reference to "MOUs with federal and provincial departments and agencies." Could you give us a list of those MOUs with the federal and Ontario departments and agencies?

Mr Régimbald: I'm aware that we have a memorandum of understanding—I believe it's in its final stage of drafting—with Health Canada. We have a memorandum of understanding with Transport Canada involving interests of emergency preparedness and response. We do have a memorandum of understanding with the Ontario government. Michael, do you know if we have them with other provinces?

Mr Callighen: As far as I know, Ontario is the only province we have a documented memorandum of understanding with at the moment.

1530

Mr Zimmer: Is that memorandum of understanding available to this committee?

Mr Callighen: I'm sure it would be.

Mr Zimmer: Could someone follow up to make sure we get that, Mr Chair?

Secondly, in the memorandum of understanding with Ontario, have you got any thoughts on what parts of that MOU you might want to see codified either federally or provincially?

Mr Régimbald: I'm not very familiar with that memorandum of understanding.

Mr Callighen: Mine is probably not a lot better than André's. It's just very short, basically saying that in a crisis we are willing to coordinate and co-operate and provide the necessary resources we have available to us.

Mr Zimmer: If it's in general language, just as you've highlighted, do you have any views on whether that MOU should be in much greater detail and, if so, what kinds of things would you like to see covered in the MOU?

Mr Régimbald: I think it's general enough. It gives the framework; it provides the envelope within which co-operative activities take place.

Mr Callighen: The details are pretty much spelled out, if you want, in the provincial emergency plan. So if you were to look at the provincial nuclear emergency plan you would see places where it specifically mentions that the CNSC will provide this or some other thing or technical expertise to sit on a committee or something. It's probably too detailed to put that sort of thing in the MOU. It's just saying this is the link between the province and the federal government, and then the actual plans—ours and the province's—would contain the details.

Mr Zimmer: Thank you. I look forward to seeing the MOU.

The Acting Chair: A question for either of you: You mentioned your reporting out is done through the Ministry of Natural Resources. Do you have an annual report that you make to the minister?

Mr Régimbald: Yes, we do.

The Acting Chair: Is that made public?

Mr Régimbald: Yes, it is a public document.

The Acting Chair: So your lines of accountability are through that ministry; therefore, the minister can then be questioned in the House.

Mr Régimbald: Yes, absolutely.

The Acting Chair: OK, that's fine. Any other questions?

Wayne Arthurs, MPP, Pickering-Ajax-Uxbridge.

Mr Arthurs: Mr Chair, just to follow up on your question, I'm not sure to what extent you're familiar with the work of Elizabeth Dowdeswell under the Nuclear Waste Management Organization, which she's currently undertaking as it relates to disposal of waste fuel. Her reporting, as I understand—although I don't know whether it will continue once she finishes her work—is directly to Parliament. Do you know that offhand, and if it's an expectation that that organization will continue to have a direct parliamentary report as opposed to a ministerial report?

Mr Régimbald: I think we're not in a position to answer that question.

Mr Arthurs: Fair enough. Thank you.

The Acting Chair: Any further questions? That's all.

On behalf of the committee, and certainly the provincial Legislature of Ontario, I would like to extend our thanks to Mr Régimbald and Mr Callighen for their helpful presentation and overview of the Canadian Nuclear Safety Commission. Please pass on our thanks to your minister and to everyone at the nuclear safety commission. It's been most helpful.

Mr Régimbald: Thank you very much. If you have any questions or would like to receive copies of documents that would be of interest to you, please forward us any requests. You can also consult our Web site at www.nuclearsafety.gc.ca.

Also, I was wondering if it would be possible to have a copy of the proceedings. Could that be made available to us?

The Acting Chair: Yes, you can get those by going on-line to the province of Ontario Legislative Assembly Web site. The Hansard will eventually be made available, probably in two or three weeks. You can get a verbatim transcript. If you can't, just contact the Clerk of the House and we'll get it to you.

Mr Régimbald: OK. Thank you very much.

The Acting Chair: Again, thank you and good day.

If there are no further deputants or questions or comments, we will adjourn for today and resume hearings tomorrow at 10 o'clock with the province of Quebec by teleconference. We're going to have the Deputy Minister of Public Security and his associate deputy ministers tomorrow. We look forward to that.

Mr Brownell: Do we have any of the spots filled in the afternoon?

The Acting Chair: There's no confirmation right now. We're continually going through our list and recalling people who have not responded, but we can't determine that. Right now, it is open.

Mr Brownell: So don't plug in anything. Leave it open.

The Acting Chair: Wait for news. I can't say for sure. Thank you very much. We are now adjourned.

The committee adjourned at 1535.

CONTENTS

Monday 23 August 2004

Emergency Management Statutes Review.....	JP-203
Emergency Management Alberta	JP-203
Mr Dave Redman	
Dr Barry Smit.....	JP-207
Ministry of Energy	JP-212
Ms Rosalyn Lawrence, director, consumer and regulatory affairs branch	
Mr Paul Murphy, chief operating officer, IMO	
Nova Scotia Emergency Measures Organization.....	JP-218
Mr Mike Lester	
Poultry Industry Council.....	JP-222
Ms Deborah Whale	
Canadian Nuclear Safety Commission	P-228
Mr André Régimbald	
Ms Michael Callighen	

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**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 24 August 2004

**Journal
des débats
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Mardi 24 août 2004

**Standing committee on
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**Emergency Management
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 24 August 2004

Mardi 24 août 2004

*The committee met at 1004 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEWEXAMEN DES LOIS ONTARIENNES
SUR LES MESURES D'URGENCE

The Acting Chair (Mr Mike Colle): Members of the committee, I would like to call the committee to order. This is the Tuesday, August 24, meeting of the standing committee on justice policy. As members of the committee know, we've got a new member today: Tony Wong, the member from marvellous Markham.

PROVINCE OF QUEBEC
PROVINCE DE QUÉBEC

The Acting Chair: The committee is charged with reviewing all emergency management statutes in the province of Ontario for the purpose of writing a draft bill to improve emergency preparedness for the province.

We have, up to this date, received teleconference communications and deputations from the province of Nova Scotia and the province of Alberta. This morning, we are pleased to have a teleconference with the province of Quebec. We have Luc Crépeault, deputy minister of public safety. Mr Crépeault, are you there?

Mr Luc Crépeault: Yes, I am.

The Acting Chair: Bonjour. Also, Denis Racicot?

Mr Denis Racicot: Good morning.

The Acting Chair: Bonjour. And Lise Asselin, deputy minister?

Ms Lise Asselin: I'm not deputy minister; I'm just a director. But I'm here and I'm glad to be with you.

The Acting Chair: Thank you. We're glad to have you. And Georges Beauchemin, assistant deputy minister. Georges?

Mr Georges Beauchemin: Hello, hello.

The Acting Chair: Good morning. Welcome. As the Chair of the committee, my name is Mike Colle, and we have MPP Laurel Broten from Etobicoke-Lakeshore; MPP Wayne Arthurs from Pickering-Ajax-Uxbridge; MPP Jim Brownell from Stormont-Dundas-Charlottenburgh, which is in the Cornwall area, near the beautiful St Lawrence, which the province of Quebec, I'm sure, is neighbours with.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Right on the border.

The Acting Chair: Right on the border. We have, all the way from Perth-Middlesex, MPP John Wilkinson; MPP Tony Wong, as I mentioned, from Markham; and MPP Peter Kormos from Niagara Centre is also here.

I would just pass it over to committee member Laurel Broten, who is going to make some comments en français and then turn it back to me. MPP Laurel Broten.

M^{me} Laurel C. Broten (Etobicoke-Lakeshore): Bonjour. Aujourd'hui, on est au commencement de notre troisième semaine de consultations sur les révisions des propositions de loi en Ontario envers les statuts pour gérer les urgences.

Durant les premières deux semaines, on a eu des consultations avec la Nouvelle-Écosse, l'Alberta, les municipalités, entre autres, et ceux qui répondent aux urgences dans la province en première ligne.

On essaie de regarder ce qu'on a appris durant le SRAS, par exemple, que l'Ontario a subi il y a quelques années, et aussi, entre autres urgences, la panne d'électricité qu'on a eue l'été passé.

Durant la semaine, on regarde particulièrement les pouvoirs d'autres juridictions pour répondre aux urgences dans leur province. On a entendu dire que ça ne fait pas tellement longtemps que vous, à Québec, avez subi presque le même exercice, et on espère ce matin apprendre de vos connaissances et apprendre un petit peu de vos consultations durant les dernières années. Merci.

The Acting Chair: Thank you, MPP Laurel Broten. To our presenters from Quebec, just to review our format here, essentially, you will be given time to make a presentation, making your comments as you see fit, whether it be an overview of the Quebec legislation and some of the status of Quebec legislation as it relates to emergency preparedness. After the presentation by one or all of the presenters in—you are in Quebec City, right?

Mr Beauchemin: Yes, we are.

The Acting Chair: Good. Then after that we will ask some questions or make some comments. Is that all right?

Mr Beauchemin: That's fine.

1010

The Acting Chair: Most of them will be in English, but our colleague Laurel Broten is going to communicate in the other official language, French.

Feel free to begin your presentation. Please, when you start to speak, if it's a different person, could you identify yourself, as this is all recorded for the public record on Hansard. Then you can get transcripts of this, which we can send you for your review.

In advance we'd like to say, on behalf of the committee members especially, and the Legislative Assembly of Ontario, we certainly appreciate your sharing your time and expertise with this committee. We'd like to thank you for making time for us in our work and sharing your information with the committee here in Ontario. Please begin.

Mr Cr peault: I'm Luc Cr peault. I'll begin with an overview in French of what has happened in Quebec. First I must mention that our new bill was adopted in 2001.

Il faut faire un bref aper u et c'est Lise Asselin qui va continuer. Notre loi a  t  le r sultat de deux  v nements majeurs, un peu comme ce que vous vivez en Ontario pr s ntement, o  le SRAS et le shutdown a  t  tr s important pour vous. Nous, il y a eu deux  v nements : le grand d luge du Saguenay en 1996, qui a amen  une premi re commission, la Commission Nicolet 1, qui a fait le tour de tous les probl mes v cus et qui a amen  principalement une nouvelle loi sur les barrages qui rel ve du ministre de l'Environnement; et apr s  a on a eu le grand verglas de 1998, qui a  t  un autre d clencheur avec une commission pr sid e toujours par M. Roger Nicolet, la Commission Nicolet 2, qui a amen  la r vision de notre loi.

Je vais laisser un peu de temps au traducteur de faire sa traduction-l . Apr s, Lise Asselin pourra poursuivre sur les grands principes de notre loi.

Mr Beauchemin: The main focus of what has happened in Quebec over the last six or seven years resembles what Ontario has gone through. It's basically two events in Quebec that triggered the new bill, which has now been passed in front of the House. It was the rainfall of 1996 on the Saguenay which created the first public commission, headed by Mr Roger Nicolet. That commission was charged with reviewing everything that happened and it brought the government to adopting one bill on the safety of dams and dikes. Then in 1998 the ice storm hit Quebec, as well as Ontario and New Brunswick, and the government created another commission, still headed by Roger Nicolet. He examined all the preparedness and all the structures and recommended a major overhaul of our legal system, which was done, and the bill was passed in 2001. That bill is now law.

I'll leave it now to Lise Asselin to cover the structure and the main points of the bill.

Mr Cr peault: The report of Mr Nicolet is available in English if you need it.

Ms Asselin: This is Lise Asselin speaking. Maybe prior to starting, may I ask you if the members of your committee had the opportunity to have a look at our new law? We believe this is the first time you will have worked with our law.

The Acting Chair: We have an executive summary of your new legislation.

Ms Asselin: OK. Thanks a lot. So I will just do a brief tour about this.

We have 12 chapters in that law. For sure, the first chapter is about the purpose and the scope; this is for civil security. Then we have the other chapters.

The first group of chapters gives powers, responsibilities to groups of people, so we have a special chapter giving responsibility to everybody, to the person, and then we have a special chapter, chapter III, for persons whose activities or properties could generate a major disaster risk. We are thinking about companies and all those things, so they have responsibilities with our law.

The next chapter, chapter IV, is for the local and regional authorities, so all the municipalities. We give them instructions on how to do a civil protection plan. We also give them exceptional powers if they need them during a very big emergency, so they have the possibility to use a declaration of a local state of emergency, and we give them other responsibilities and mutual assistance.

The next chapter consists of all the responsibilities of government departments and government bodies. You understand that our minister has the responsibility for civil security, but if we have to manage an emergency, we have to work together with all the other ministries. We have a coordination role. So it's all the ministries that are involved in the governmental effort to help people in the municipalities.

Chapter VI gives explanations about the powers of the Minister of Public Security, his functions, explaining that he is in charge of Quebec's national civil protection plan and also the possibility to implement measures and the declaration of a local state of emergency by the minister. Let me tell you that these are powers given to the minister. It is impossible for a municipality to use the special power, so in very, very exceptional cases, if it is needed, the minister may do that in place of the mayor.

The next chapter, chapter VII, is about government. The first division is probably the one you are very interested in, as you told us previously. This is the declaration of a national state of emergency. I will be able to go a little bit further afterwards if you want to have more explanation about that part of chapter VII. Then we have an important part of the chapter about governmental financial assistance, and we also have a part of that chapter that talks about regulatory powers.

Finally, we have five chapters that you will find in every other law, so presumptions, rights and immunity, penalties and remedies, amending provisions, transitional provisions, and final provisions.

This is a very fast wrap-up of the Quebec Civil Protection Act. Do you have any questions, or would you like us to go right now into the part about the declaration of a national state of emergency? As you wish.

The Acting Chair: No, go ahead.

1020

Ms Asselin: In the government part, that law gives exceptional powers to the Quebec government. Perhaps you have a copy of our law; if not, we can send you copies. It is also available in English on our Web site.

The articles I am talking about are articles 88 to 99. This is division 1 of chapter VII, talking about government.

The first thing we have to say is, "The government may declare a national state of emergency," but it is very structured. It is possible to declare that when there is a major disaster situation, actual or imminent, or an "event that interferes with the life of the community to the point of compromising human safety, immediate action is required to protect human life." We must have two conditions: There is a problem for human safety and it is very important that immediate action is required to protect human life and so on. It is only in those conditions that the government may use those powers. That state of emergency is declared by the government and it is effective just for a maximum of 10 days, and it could be renewed with the consent of the National Assembly.

If we are in a very big emergency and that's the only way we can go, because all the measures we are able to have are not sufficient, and if it is impossible to have a declaration by the government, there is a special power for our minister to declare a state of emergency, but at that time it's just for a maximum of 48 hours.

This is the beginning of that. Then it is full of accountability, and afterwards we have a description of the special powers we may use in that case. It is in article 93, and we have 14 possible powers to use. So you can't use those special powers if those conditions are not in place. They may order the implementation of the response measures provided in the civil protection plan. They may order the closure of some establishments in the territory concerned. They may control access or enforce special rules or close some roads, always only for the territory concerned. If there is no other safe alternative, they may order construction or demolition of any work. They may, when there is no safe alternative, order the evacuation or consignment of the inhabitants of parts of the territory. They may require assistance of any person capable of assisting personnel. They may require the necessary rescue services or private things. They are also able to ration essential goods and services. And they may have access to any premises for the carrying out of an order under this section. They could also decide, if necessary, to implement some special financial assistance.

I have just given you a general overview of those powers. They are a little bit more involved than that. If we decide to use those powers, for sure there are responsibilities. For example, if the government decides to require the assistance, it has to make financial arrangements to pay for the assistance. So we have other rules, articles, which are giving them the information about that.

Something very important is that the government may lift the state of emergency as soon as it considers that it is no longer necessary. The government or the National Assembly may stop that emergency if they think it is not used correctly on something like that. I think that's it, generally speaking, for an overview. We covered most things, and I will let George add some information.

The Acting Chair: Excuse me, every time there's a new speaker, if they could just please identify themselves.

Mr Beauchemin: This is Georges Beauchemin speaking. What Lise has just outlined are the exceptional powers in the act. You might have noticed that it is not an emergency act; it is a civil protection act. The structure of the act obliges municipalities, departments and regional counties to go into planning, preparedness, intervention and recovery plans in order to marshal all the resources they can in their own territory if something happens. It is only when those resources do not meet the situation that either a mayor may go and enact these extraordinary powers or the government or the minister if everything else is failing.

We must point out also that in the previous act there were some similar powers. These exceptional powers—in the last 30 years or so we've gone through quite a number of events—have never, ever been used. During the Saguenay, even during the ice storm, a declaration of emergency was never used. Even in the new act they are so extraordinary, in terms of powers, that they're the last resort of the arsenal, if I may speak like that.

This is the last stand you may use in order to protect human life; that is one major condition. You cannot use these powers to protect a house, for example, or to protect a street or a public building; you have to use the other, ordinary measures to do that. It's only in order to protect human life that you may resort to these extraordinary powers, and then you have to account for what you've done, why you've done it. You have a lot of things to tell either your constituents or the others.

Mr Crépault: I'm Luc Crépault. I will explain in French one event that gave us the idea that we needed new powers.

En octobre 1999 il est arrivé un événement où les camionneurs ont fait une grève qui a contrôlé tout l'accès à la région Abitibi-Témiscamingue, qui est à la limite est de votre frontière ontarienne. Cet événement a eu comme conséquence de rationner l'essence, d'avoir des pénuries d'essence et en fait de paralyser complètement toute une grande région d'environ 170 000 habitants.

À ce moment-là nous nous sommes tournés vers le ministère sectoriel, qui était le ministère de l'Énergie et des Ressources, pour savoir si dans leurs lois sectorielles il y avait des pouvoirs qui permettaient de forcer des grandes compagnies comme Shell, Petro-Canada et autres à livrer l'essence pour briser un peu cette mise en tutelle de cette région-là par un certain groupe d'intervenants.

Le ministère concerné n'avait aucun pouvoir pour forcer l'approvisionnement en pétrole, ce qui nous a convaincus qu'il fallait absolument avoir, dans des situations exceptionnelles, des pouvoirs de, ne serait-ce que pour permettre de remettre sur place la qualité de vie économique de toute une région. En 1999, aucun ministère du gouvernement du Québec n'avait de tels pouvoirs. C'est l'événement qui nous a convaincus qu'il fallait avoir des pouvoirs dans notre Loi sur la sécurité

civile, et ces pouvoirs, si nous les avions eus à ce moment-là, nous auraient permis de raccourcir de deux semaines à probablement une semaine l'état de crise, donc de couper de moitié le temps de répondre sur le rétablissement de la situation.

1030

Mr Beauchemin: This is Georges Beauchemin. I'll be translating what Luc Crépeault has just pointed out.

M. Crépeault was pointing out an event which occurred in October 1999. We had a truck strike in Quebec where all the truckers decided that they would stop the traffic on highways and so on. That brought in a situation where in a region that you know, which is Abitibi-Témiscamingue, with over 150,000 people, there was no more fuel being carried, through intimidation on picket lines. That brought a very dire situation in terms of public security; foodstuffs, medical stuff for hospitals, transit of persons was being held up. That event convinced us at the time and convinced the government of Quebec that we should have these kinds of extraordinary powers in order to instruct oil suppliers such as Esso, Shell, whatever, to deliver the fuel in those areas, with police escort if need be, or whatever. But not having those kinds of powers, we now know that had we had these powers, we would have brought down the downtime of this situation by at least 50%. Instead of having a region being held hostage like that for two or three weeks, we would have brought that down to about seven to 10 days at the most.

So this is a situation which has occurred where the kinds of extraordinary powers might have been put on the table—not necessarily used, but put on the table—so that people knew at that time that public safety and delivery of essential goods would be carried out and that the conflict would be resolved in other manners.

Mr Racicot: My name is Denis Racicot. I don't know if you have some questions on this item or if explanations are complete.

The Acting Chair: We will now have the MPPs, one at a time, ask some questions of the presentation. First, MPP Laurel Broten will ask her first questions.

M^{me} Broten: Merci beaucoup pour votre explication et pour nous avoir expliqué les mesures que vous avez mises en place.

J'aimerais savoir si vous pouvez discuter un petit peu plus la justification des faits sur les droits civils des citoyens de la province et le débat que, je suppose, a pris place à Québec durant le temps que vous avez regardé à mettre en place votre nouvelle loi.

M. Crépeault: Est-ce qu'on peut vous répondre en français, madame?

Ms Broten: Oui, s'il vous plaît.

M. Crépeault: Bon. Je vais peut-être faire une introduction—Luc Crépeault—et Denis Racicot complétera.

D'abord, en se replaçant à l'époque de notre loi, il y avait notre premier ministre à l'époque, Lucien Bouchard, qui venait juste de vivre les événements du verglas où il avait exercé un rôle déterminant. Dans ce contexte-là, lui-même est avocat, et il avait lu notre loi et

avait été quand même très critique par rapport à certains aspects de la loi. Il voulait aussi s'assurer que le respect des droits civiques soit aussi bien encadré.

Quand même, nous sommes sortis de cette impasse; d'abord je pense que, comme M^{me} Asselin tout à l'heure a bien spécifié, on a très bien circonscrit les pouvoirs donnés aux ministres et aux municipalités dans des situations très précises. Donc, on peut facilement, par la nature des événements et la nature des éléments qui justifient l'emploi de mesures d'exception, montrer que c'est dans l'intérêt commun. On sort beaucoup lors de cet encadrement de l'aspect vraiment protection individuelle. C'est très clair que le collectif est très supérieur à ces moments-là à l'élément protection des droits civiques et même que dans ces situations-là la protection des droits civiques passe par des pouvoirs d'exceptions communs pour diminuer les impacts sur la population. Donc, c'était très bien décrit, je pense, dans notre loi.

À cet effet-là, nous avons aussi tenu compte des lois existantes. Nous avons reproduit dans les mécanismes d'imputabilité qui suivent l'exercice de ces pouvoirs spéciaux tout ce qu'il y avait déjà dans les lois, notamment la Loi sur l'Assemblée nationale. Donc le devoir après l'exercice de pouvoirs spéciaux au niveau du gouvernement est imputable devant l'Assemblée nationale, de l'exercice de ces pouvoirs. Donc, je pense qu'on a très bien encadré ces pouvoirs-là pour pouvoir répondre à toutes les objections de nature de protection des droits privés.

Je pense que Denis veut continuer.

M. Racicot: Vous savez, une situation exceptionnelle, ça commande des moyens exceptionnels. L'exception, donc, aux règles habituelles, comme Georges a si bien mentionné, concerne la sécurité des personnes uniquement. La sécurité des biens n'est pas un motif pour déclarer un état d'urgence.

L'autre élément important c'est le contrôle qu'exerce l'Assemblée nationale sur l'utilisation de ces pouvoirs. Rappelons-nous que toute utilisation du pouvoir d'exception doit à tout le moins donner lieu à un rapport à l'Assemblée nationale. Le ministre ou premier ministre est redevable à l'Assemblée nationale sur l'utilisation de ce pouvoir.

Les pouvoirs d'exception sont énumérés de façon précise dans la loi. Donc, ils ne peuvent pas être utilisés pour d'autres fins que celles déjà identifiées dans la loi. Il y a 14 pouvoirs d'exception ou objectifs qui sont énoncés dans la loi. Les pouvoirs d'exception sont limités à ce qui est prévu dans la loi. Donc, ça nécessite l'usage d'une déclaration d'urgence; c'est supposer que le gouvernement dispose de moyens exceptionnels pour faire face à une situation exceptionnelle.

1040

Mr Beauchemin: I'll just add a few words in English. The debate over the powers and over civil rights—the balance in the act is basically, in a nutshell, this: It is only in order to save human lives, and only when everything else has failed, that extraordinary powers can be used that would limit, for 48 hours or 10 days at the utmost, some

civil liberty. The balance there, the equation, is that the death of a human negates his own rights. He doesn't have any more rights, because he's dead. In order to save his rights, you have to save his life. If you want to save his life and everything else is failing, you have extraordinary powers, but those powers are structured and you have to give an account of everything that was done and why it was done to the National Assembly, either through the minister or the prime minister. Every explanation has to be given of why everything else has failed in those circumstances and why those extraordinary powers were used.

The debate over civil rights was not very high in Quebec, because the act is so structured and the exceptions so limited in circumstances that, through experience over the last 30 years where similar powers existed in previous acts, we found out that it is really in extraordinary, exceptional circumstances that they would be used, and in such a limited fashion and with such a high political and legal account of why they were used, that the necessary checks and balances to safeguard civil liberties are there. Does that answer your question?

M^{me} Broten: Oui, merci. Je voulais juste poser une autre question. Après 2001 et votre proposition de loi, est-ce que vous pensez que vous avez mis l'exception si haute qu'il y a eu des instances où vous avez pensé exercer les droits dans votre statut mais que vous ne pouviez pas? Je me demande parfois si on met la barre si haute qu'il va y avoir des instances où il y aurait une demande de protéger des gens, mais ce n'est pas si haut que la base que vous avez mise en place.

M. Racicot: Vous savez, lorsque nous disposons de tels pouvoirs, il arrive que des gens voudraient que le gouvernement les utilise très rapidement. Jusqu'à maintenant, nous n'avons pas eu à les utiliser parce que les moyens ordinaires étaient suffisants, ou encore du seul fait que les gens savaient que l'on disposait de pouvoirs d'exception, ils se sont conformés sans que nous ayons eu à les utiliser. Il nous revient, à nous dans le Conseil des ministres et au gouvernement, de s'assurer que des pouvoirs d'exception soient utilisés dans des cas exceptionnels. Jusqu'à maintenant nous n'avons pas eu à les utiliser dans un tel cas parce que, à deux ou trois occasions, les gens ont accepté de donner suite à nos demandes, sachant qu'on avait le pouvoir de les obliger, et tout en convenant qu'il n'était pas nécessaire de les obliger de le faire.

Mr Beauchemin: I'll just give you an account of something that happened two summers ago, during the month of July. Both Luc and Denis were on vacation, so I was holding up pretty much on what was going on. We had very, very intense forest fires that brought a column of smoke right down to Montreal. Those forest fires were in the James Bay area and all these areas. The fires were so intense that even the firefighters could not approach the blazes. I remember one occasion where one actor, a public department, started asking us to use extraordinary powers to force the evacuation of whole areas and tracts of public lands. We refused to do that because human life

was not threatened. By simply stating all the conditions that would be needed to prove that all normal measures had not been put into effect—these were last resort—we were able to show them that they still had a lot of muscle power they were not using, still had a lot of things they could do that they were not doing, and that we would hold them accountable for not using those normal means of fighting the fire.

So extraordinary powers can be used in both ways. They can be used to structure a discussion when things are going badly so that the actors are forced to act through normal means. We forced them to actually go back and fight the fire, which they did and it succeeded, and we did not have to use any of those extraordinary powers. Simply by pushing them back into their own corner, if I may say so, they were brought into a situation where they actually faced that they were not doing things properly and that extraordinary powers, if they were used, would show the lapse in their actions. It is very powerful on both sides, if I may say so.

Ms Broten: Thank you very much.

The Acting Chair: Any further questions? MPP John Wilkinson from Perth-Middlesex now has a question.

Mr John Wilkinson (Perth-Middlesex): Good morning. Thank you so much for making yourself available to the committee. Could you comment on the question of quarantine? We've been receiving information, especially post-SARS, about the question of voluntarily trying to convince people, when there's an infectious disease, that they need to quarantine themselves. I'd be interested in whatever comments you have about your act and how you see your ability to deal with that question when there's a public health emergency, when there's an infectious disease.

Mr Beauchemin: The Civil Protection Act does not replace the health act or the veterinarian act or any other act. Quarantine for humans is part of the health act. They would resort to our powers only if they were in a situation where their powers would not be sufficient to deal with the situation, and then it would have to be shown and demonstrated that that is the last resort and the only way of saving human life. That leaves a lot of elbow room. Their power under the health act gives them the power to do quarantine.

1050

Mr Wilkinson: One of the things we're struggling with is that the advice we're receiving—and also in the area of what they call zoonotic diseases, where you could have a disease in livestock and animals that can transfer to humans—the experience they've just had in British Columbia with avian influenza in the poultry industry there—and then actually getting into humans coming down with this, and the fear, if that was a highly infectious disease, of what would happen. It's balancing the need for government to move swiftly to be able to quarantine both livestock and people. In other words, by the time you have figured out that there was a public health risk, the disease may have already spread into the general population, as we've learned about the potential for a pandemic.

So I guess we're struggling with the whole issue of how fast government can react when the medical people are telling us that there could be a possible—in other words, if you wait too long to find out that, yes, there are people dying, it's already into the general population.

Mr Beauchemin: Just to give you a sense of our structure, when we wrote the act and when we discussed it with all the other departments, everybody agreed that the Civil Protection Act was the second or the last layer of your system. The first layer of your system is that in every department, in every act enabling health, agriculture and environment, they have special powers to deal with special situations, and the responsibility of the minister to deal with the situation is there. Civil protection does not erase that responsibility and it does not supersede that responsibility. The minister has to act. It is only if coordination is needed that we will intervene.

Another thing I'd like to point out is that in our system we get a lot of pressure sometimes from departments. I remember the West Nile virus. When they started the spraying program—it was a year ago, I think, or a year and a half ago—they wanted us to use our powers in order to then send the bill to the federal government because of the DFAA program.

You have to remember also that the financial constraints of any province are always in the back of the minds of people when you start using powers and when you start dealing with these kind of situations. The budgetary costs are sometimes very high, and because of the DFAA structure, if it is not a civil protection call, if it is a health call, the DFAA won't cover that type of expenditure by a province, even if it is outstanding. We remember your experience with SARS.

So in the debate over the structure of powers or the timing, civil protection cannot replace the duties of health or other departments. They can only be sought out as the second or the last layer of your system to act if everything else is failing. But then you've demonstrated politically that everything else has failed when you use that. So it's two-edged sword.

Mr Wilkinson: Thank you. That's very helpful.

Mr Tony C. Wong (Markham): My question relates to the issue of protection of human life; you've given us examples when they did not relate to the protection of human life. How immediate or non-remote does it have to be for you to make that decision or determination? Also, have you met with situations previously when you had difficulty in determining whether the exceptional powers might be necessary to protect human life?

Mr Beauchemin: I'll give you an example. We have 10,000 dams and dikes Quebec. In 1996, we lost 11 dams. We almost lost a few dozen people who were fished out of the water by national defence helicopters and saviours. We were also faced with the situation where we almost lost a big reservoir that would have spilled into the Chicoutimi area. When those things happen, events are actually cascading in terms of minutes and seconds. If you're going to be losing a dam with hundreds of millions of cubic metres of water that will

destroy life and property, then you are faced with a situation where you might have to declare in a matter of an hour this kind of emergency in order to force evacuation if you know the dam is going to fail. This is the kind of situation we almost faced that brought us to understand the kind of chain of events that would trigger the use of these extraordinary powers.

We had this summer another similar event. We have in the Saguenay area 20 houses that people have built very close to a very steep, rocky cliff. We just found out and we asked these people to move out of their houses because huge boulders are unstable. We were faced with a situation where these people might lose their lives and houses and everything else because tons of rock would fall down on their children and so on. If you find out that the rock is going to be falling within one hour or 10 minutes or imminently, you are then faced with a situation where you cannot hold the rock back. There is no other means but to force an evacuation for the time necessary to secure the premises. In this case, it's a permanent evacuation.

Mr Wong: So time is obviously an important factor. Does it mean that in general, if it is a matter of hours, it would be interpreted to be immediate enough, but if it is, say, a matter of days, then you might wait a little bit?

Mr Beauchemin: It's not necessarily a matter of hours; it's a matter of showing that the context of that situation is such that there is no other resort than the use of these powers to save human lives. Sometimes you might be in a situation where it might be minutes, it might be hours, it might be days, but it's the emergency notion there that supersedes everything else.

Mr Wong: Thank you.

The Acting Chair: Further questions? I have a couple of questions. First of all, the lead ministry in an emergency situation is the Ministry of Public Security, right?

Mr Beauchemin: Yes.

The Acting Chair: In terms of the powers that the mayors can exercise in municipalities, does the minister have to pass down those powers to the mayor, or how is that done?

Ms Asselin: First of all, we must tell you that the powers given by law to the municipalities are really smaller than those given to the government. This is article 47. There are only six powers that may be used by the mayor and it is more structured. There is a lot of accountability by the mayor and he has to be in contact with the minister. The minister has to check to be sure that everything is correct and that it is used correctly.

Those powers are really for the municipalities, so the mayor can't take a decision which will touch any part of any other municipality. This is the major thing we have with that.

1100

Mr Racicot: On this question: The mayor can declare this emergency situation for 48 hours, the council for five days, but after that they need the authorization of the Minister of Public Security.

The Acting Chair: I think that's a good explanation. Secondly, are there any penalties in your legislation imposed on individuals who engage in price gouging, for instance in gasoline? Are there any provisions for imposing fines or jail sentences for people who would charge an astronomical price for gasoline in a time of emergency?

Ms Asselin: We have a special chapter based on penalties. It is chapter IX. I can't really tell you right now what the exact penalties are. I know there is something but I really can't give it to you right now. They are articles 128 to 133 and all those penalties are written in there.

The Acting Chair: OK. We will do some further reading on section 128.

The second question, in the same vein, is in terms of misuse or abuse of limited resources in a time of civil emergency; for example, the excessive use of electricity during—as you know, we had the blackout here. Are there penalties for what we call squandering or excessive use of limited energy? For instance, if a building doesn't turn off its air conditioner or if a factory is using too much power, are there penalties for that?

Ms Asselin: I think the powers we have under article 128 may include what you said. It says:

"The following persons are guilty of an offence and are liable to a fine of \$1,000 to \$5,000 ... every person who fails to report a risk ... every person who hinders the minister, an investigator" and so on.

If this is not done correctly, I think we have powers. If we are in a state of emergency and we use those special powers, for example, to close the electricity or to restrict its use by municipalities, we have powers to give penalties to the people who don't respect those special things.

Mr Racicot: Just one moment, please. We have something else to tell you: 7 and 11.

Ms Asselin: What my associate deputy minister wants to tell you is that in the special powers we have under article 93, there are two special sections. Subsection 7 says, "order that power and water mains be shut off in all or part of the territory concerned." So this is a special power for that. There is also a special power in number 11 to "ration essential goods and services and establish supply priorities."

It means that if the government decides to use those powers, and if we have people who don't want to respect those powers, then we may go to the penalties sections and use the powers for penalties. So it's planned.

Mr Racicot: If we are short of gasoline, we have the power to take control of all gasoline in the province and make decisions as to where the gasoline will go and who will use it. We have the power.

The Acting Chair: The next question: Yesterday we had a deputation concerned about the spread of zoonotic, animal-borne diseases, given our experience here with SARS. The reference was made that in Guelph, Ontario, we have what is called a level 2 lab and, as you know, there's a level 4 lab in Winnipeg.

What kind of laboratory capacity exists in the province of Quebec?

Mr Beauchemin: After 9/11, we did an examination of what capacity we had. We beefed up our capacity on the human side. We now have a full-fledged level 3 lab in Ste-Anne-de-Bellevue. We've added a level 3 lab for vet purposes. We've upgraded another lab to level 2 for vet purposes as well. So we have level 2 and full-fledged level 3 for human health, and level 3 for animal health as well.

The Acting Chair: That's very helpful. Again, we were told yesterday that the chief veterinarian for the province of Ontario has very limited powers. We were given an example from the United States, from North Carolina, where the chief veterinary officer has considerable powers in a case of emergency.

What about the role of the chief veterinary officer in the province of Quebec? Have you looked at that—not so much through your act but perhaps through the Ministry of Agriculture or the Ministry of Health? Has that situation been revised lately as it relates to the chief veterinary officer of the province?

Mr Beauchemin: When we did our act we toured every department. So health, agriculture and environment were all consulted.

After 9/11, I remember the act had only gone into first reading in the House. It was not yet adopted. It was not yet a bill. We were asked by our Privy Council if we wanted to add powers due to what happened in New York. We did another turn of the wheel, if I may say so, in consulting all the other departments. We all agreed that what is in the act right now was sufficient, and that the extraordinary powers which are there would be sufficient to deal with a situation that an event such as 9/11 would bring upon us, and that it was the responsibility of every ministry or department to make sure that their own sectorial act was up to date, that they had gone through the exercise. So our act actually served the useful purpose, if I may say so, of refreshing the legal outlook in other departments.

I must stress again that we have never thought the Civil Protection Act should be the act used to deal with health matters, animal health matters and so forth. Those are sectorial responsibilities. Ours is the last resort.

Lise wants to add something.

1110

Ms Asselin: If I may add a small comment, it is very important to put an emphasis on article number 3 in our bill, which says, "This act shall not operate to limit obligations imposed or powers granted by or under other acts as regards civil protection."

As Georges explained to you, this is a very important article because it means that in Quebec civil security—and this is the spirit of our law—is a responsibility owned by each ministry, by each municipality and by each co-operative citizen too. So it's a group, and we have to share all that. For sure, a ministry has to co-ordinate all this, and this role involves our ministers too.

There is an article, number 63, that gives that power to our ministers through the Minister of Public Security. It says that the minister shall advise government departments and government bodies with regard to citizen protection and facilitate the coordination of their actions. This is the main role, but our minister is not the boss of the other ministers; for sure, it's the prime minister. We have to work together in coordination, and our system was developed based on that.

Mr Beauchemin: Just a last comment on this: Luc Cr peault is pointing out that our act has to be thought of by everybody else as the ways and means to deal with the consequences of events when everything else is failing, when the other acts are not sufficient or the circumstances are so exceptional that even the evolving responsibilities in health departments and other departments are not up to the task. But it does not replace the duties and responsibilities that come with dealing with situations by a sectoral minister—or a municipality, citizen or corporation.

The Acting Chair: Was a systemic overview done by each ministry in light of new emergency realities? In other words, did each ministry go through a process of updating their legislation to ensure that their powers were adequate to deal with a situation in their sector? Did they do this audit or update?

Mr Racicot: In fact, our minister is the lead in government for civil security, for emergency measures, in respect of the jurisdiction of each minister. Consequently, the main facts working in public security measures are in our ministry. For my part, I'm the coordinator of emergency measures for the government, and I play a role like Dr Young's, I imagine. I also have the power to request the help I need from other departments of government. For that, we have approved planning to this effect, called our national plan for civil security, where we plan the responsibilities of each department in times of a flood or something like that. Each department has to maintain this plan. Also, each ministry has the responsibility to be sure they can maintain the essential services they have to give to the population. For the transportation department, they have to be sure they keep the roads open; for the cultural department, they have to be sure they keep the museum things safe—something like that. All the people who are working in these different departments, if they are free, are working for us to help the population. So we have a role of coordination.

We also have the role to support the municipalities, because sometimes the crisis is too big for their capacity to respond to it. So we have the obligation to help them—and I said help them, not take the crisis off their plate. To this effect, we have about 50 counsellors on the ground in each part of the province to help the municipalities have planning. We also send counsellors to each situation where emergency measures are working to help the municipality to faire face   la situation, to—

Mr Beauchemin: Face up.

Mr Racicot: —face up to the situation. This is the kind of organization we have. We have two roles: We

have to help municipalities, and we have to coordinate the government resources we need when the crisis is biggest.

The Acting Chair: The final question I have is, I'm not quite clear on the example—I think it was Georges Beauchemin who gave the example of the homes built on the cliff that faced imminent danger. Did the government or your ministry invoke the emergency powers with that situation? What transpired there? I wasn't quite clear.

Mr Racicot: First of all, it was a municipal responsibility because it was a local problem, OK? In making a decision, first of all, we have some expertise to help us. After that, we support the local government. But it is the mayor who speaks with the people and asks them to leave. For that, we give some support of psychologists, and also have a conference with the people and the person who has the expertise to explain to the people what the problem is. So the people leave by themselves, because their mayor wants the people to understand what happens before using his exceptional power.

The Acting Chair: So basically they decided to leave through persuasion and communication?

Ms Asselin: Exactly.

Mr Racicot: Yes. And we support them with a psychologist. It's very important, because they don't believe it. They have lived there for maybe 15 years, and they don't believe it's dangerous for them, but we have a report from a specialist on that.

Also, we have responsibility for the financial assistance program for people who are victims of some disaster. This is also the responsibility of our minister.

The Acting Chair: So in terms of a more global view of your legislation, I think you are telling us that the success of the Civil Protection Act is based on the fact that, although the powers are extraordinary, the acceptance of the legislation was the result of the fact that you have so many checks and balances; for instance, the reporting to the National Assembly and the fact that there is a very high test before these powers are invoked. Subsequently, there was acceptance from the community that these powers would not infringe upon their civil liberties. This, I guess, is the reason there was such an uptake on your legislation and not too much opposition to it.

Mr Beauchemin: You're right.

Ms Asselin: Yes.

Mr Racicot: I think you're basically right, yes.

The Acting Chair: Also, it retains powers in the different ministries and does not usurp the powers of individual ministries, but just that the security minister, or whatever lead ministry there is, should coordinate and ensure that every last degree of power is used within the existing law, the existing ministries, before you intervene, as in the example you gave in the forest fires.

1120

Mr Beauchemin: There's one section or one aspect of the act we have just touched on but which I think is very important that is also part of the check and balance. That's the duty the act now puts on the shoulders of

citizens, corporations and municipalities to take into account the risks of the territory in which they live. The act, which is in the beginning of its life, will, in the next four to five years, bring about a huge exercise. Both the corporations inside the municipality and the municipality must go through the exercise of identifying all their risks and vulnerabilities, and they will have to draft and put in front of their own citizens a master plan whereby they will touch on the four sections or four moments of civil protection, which are planning, preparedness, intervention and recovery. They will have to tell their own citizens, "This is what we have in our territory. We have this cliff, we have this river which overflows up to this limit," and so on and so forth. "Therefore, we will be adjusting and we will be telling people where you will be evacuating, who will be in charge in the municipality, what resources we have." That exercise being public also means that the risk assessment by the people living inside a community will be shared. Also, the response to the consequences of an event will be known in advance, so their capacity will be known in advance.

That exercise is also part, I would say, of the acceptance of the act, where society in the houses have accepted the fact that, yes, there are extraordinary powers in the act, but there are also new duties which are transversal in society which now bring responsibilities of civil protection not only on the government's shoulders, not only on the minister's shoulders, not only on civil servants' shoulders, but on citizens' shoulders, on corporations' shoulders and on local politicians' shoulders as well. If they do not face up to those responsibilities, they have to answer for their acts.

So the check and balance in the act is a whole complex. I would not want you to think it is only the extraordinary powers. They are the ones that bring the most discussion in the beginning, but we found out that once you structure the check and balance in such a delicate fashion, it's the overall act that is important and it's the overall responsibilities and duties and the carrying out of those responsibilities and duties which bring the success.

The Acting Chair: I think that's an excellent point. It's a two-way street, in other words. It's not just a matter of powers, it's a matter of responsibility, and everybody has to be involved in that audit and, as you said, the risk assessment. And the private citizens or corporate entities are obliged to do a risk assessment.

Mr Beauchemin: That's right.

The Acting Chair: I think that's really all the questions we have. On behalf of the committee, I would like to give our deep appreciation to all of you for being so helpful and so informative—a very impressive overview of the work you've done in Quebec. We are envious of the amount of thought and intelligence you've put into your Civil Protection Act, and hopefully we can benefit from some of the experiences you've had in Quebec. This morning's presentation is going to be most helpful to us. It certainly has given us a great deal of food for thought. I want to extend thanks on behalf of the justice

committee and the Legislature of the province of Ontario for taking time in, I'm sure, your busy schedule. I'm also going to pass it over to MPP Broten for some parting comments.

M^{me} Broten: Je voulais juste vous remercier. On espère que si pendant la période de nos délibérations, durant les semaines et les mois qui viennent, on aura besoin d'un peu plus d'avis ou qu'on aura des questions, on pourra vous appeler. Mais c'était certainement, aujourd'hui, très intéressant, et on a appris beaucoup de vos efforts dans la province de Québec. Alors, merci bien.

M. Racicot: Merci, et n'hésitez pas. Si vous avez n'importe quelle autre question, on se fera un plaisir de travailler avec vous en conférence téléphonique ou de recevoir des visites ou autre. Ne soyez surtout pas gênés de nous appeler ou de nous demander des informations additionnelles.

M^{me} Broten: Merci. Bonne journée.

M^{me} Asselin: Merci. Au revoir.

The Acting Chair: Thank you. Au revoir.

COMMITTEE BUSINESS

Ms Broten: Chair, before we adjourn, I have a couple of housekeeping matters. If we could deal with them, that would be helpful.

The Acting Chair: Go ahead.

Ms Broten: Before Mr Kormos departed, he suggested we schedule a subcommittee meeting for 9:45 tomorrow morning, in advance of the opening session. That would certainly work from my perspective.

The other issue is that the National Emergency Management Association is having a conference on September 14 and 15, and Mr Dunlop indicated that he would be interested in finding out more details about that conference. I have obtained some details. Certainly two of the four days, September 14 and 15, look most helpful for a couple of our members to attend. I wanted to raise that before the committee today and get the approval to register two members at that conference. The deadline has just passed, so I'll give it to the clerk, and perhaps he can contact the organization today and determine whether two of our members might be able to attend. Certainly I would make myself available and I believe Mr Dunlop is also available.

The Acting Chair: Any comments on the two items? The first item is 9:45; it's going to be just the subcommittee.

Interjection: Agreed.

The Acting Chair: That's agreed to, and hopefully Mr Dunlop will be made aware that he or a representative can be there.

The second issue: Any questions or comments about this conference registration and attendance by two members?

Mr Arthurs: Agreed.

The Acting Chair: That's agreed.

I also have a couple of issues. First of all, there is available to members of the committee the executive summary of the 9/11 commission report. The book on the 9/11 commission is out of stock right now. It's just available for the members' background information. It's a pretty concise and thorough examination by the 9/11 commission. So those are available.

For tomorrow's schedule, which begins with the 9:45 subcommittee meeting, it has been confirmed that we have the Ontario Trucking Association in the afternoon; in the morning we have the Ontario Paramedic Association, the Red Cross and the Dairy Farmers of Ontario—all confirmed for Wednesday.

Ms Broten: Chair, those are new additions to our list. The truckers and the dairy farmers are at what time?

The Acting Chair: The truckers are at 1 pm; the dairy farmers will be at 11:30 am. That will be made available to the members.

Mr Wilkinson: Just two more housekeeping matters: I can confirm that, next Tuesday, either I or someone from my staff will attend the Poultry Industry Council debrief post the avian influenza in British Columbia. I'll be able to report back whatever material we gather from that.

A point of clarification—and this came up in the Quebec testimony. One of the points made by Dr Whale yesterday is that we don't have an animal health act here in Ontario, which I think is where you have additional powers that flow to the provincial veterinarian. I believe her presentation was that all other provinces have that. So when we get into this issue of having extraordinary powers, there's an assumption that all the other pieces are in place. It's a gap that has been highlighted for this committee that may be beyond the scope of this committee. We're kind of at the 30,000-foot level, but there seems to be a gap that's been identified at the 5,000-foot level. I don't know how we deal with that.

I don't know whether OMAF has been invited to audit this committee, but now that we've gone into this area of zoonotic disease, I think it's important that we coordinate well with the Ontario Ministry of Agriculture and Food.

The Acting Chair: If you wish, we can even invite them to appear—I'm not sure if they have been invited already.

Mr Wilkinson: OMAF has been here. I'm sure Ms Broten would know, but I think there are three parliamentary assistants who have been tasked to audit the work of this committee. Is that correct?

The Acting Chair: Ms Broten?

Ms Broten: I think the issue raised by Mr Wilkinson is an important one. What we could do that I think would be helpful is ask research to provide us with confirmation about the animal health acts in other provinces, particularly examining this issue that has now been raised. Whether we make reference to it in a report, or who knows where we will land on the issue, we would want to have confirmation that the facts given by the deputants are accurate and that other provinces have this legislation and we don't.

The Acting Chair: Yes. As a follow-up to that, it's interesting to note that Quebec has certainly upgraded their laboratory capacity—human and animal health capacity. That was quite interesting.

The approach this committee has taken so far is that we are doing an audit of all statutes. That is our mandate. I don't think that means we are going to be suggesting that all this be incorporated in our draft bill. As Ms Broten said in her comments, references to these deficiencies or these suggestions made by deputants can be made in our report. I think it's wise for us to focus in our report on the doables from an emergency preparedness perspective.

But as I said, the mandate is to look at everything. Whatever we are made aware of, I'm sure the committee will see fit to put in the report, which I think will be of a substantive nature and helpful in giving a survey of what is and isn't in place in Ontario and in other jurisdictions, so there is an ability for us to get down to ground level as far as we can to make suggestions in our report.

If any members of the committee have presentations that have interested them that they think should be part of the report, that's what the report-writing stage will be all about. That will be facilitated by the summary written by research, where most of these suggestions and comments will be made available to all of us to refresh our memories. Also, Hansard records all the detailed presentations. That's the overview as far as I see it, in terms of the report-writing and the draft legislation.

We will meet again tomorrow at 10 am in this room, except for the subcommittee at 9:45. I would ask the committee members to remember that if there are other names or organizations that we might be able to fit in, there is still some flexibility in the schedule.

The committee is now adjourned until 10 am tomorrow.

The committee adjourned at 1134.

CONTENTS

Tuesday 24 August 2004

Emergency Management Statutes Review / Examen des lois ontariennes	
sur les mesures d'urgence	JP-233
Province of Quebec / Province de Québec.....	JP-233
Mr Luc Crépeault	
Mr Denis Racicot	
Ms Lise Asselin	
Mr Georges Beauchemin	
Committee business	JP-241

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of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

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of Debates
(Hansard)**

Wednesday 25 August 2004

**Journal
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Mercredi 25 août 2004

**Standing committee on
justice policy**

Emergency Management
Statutes Review

**Comité permanent
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Examen des lois ontariennes
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 25 August 2004

Mercredi 25 août 2004

The committee met at 1020 in room 151, following a closed session.

EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): We'll bring to order the meeting of the standing committee on justice policy.

Just for our deputants' information, this committee is mandated to deal with an overview of all Ontario emergency management statutes for the purpose of writing a draft report and draft legislation to be presented to the Legislature. To that end, we've invited literally hundreds of expert witnesses from across the province to deliberate before us. We've also had deliberations from the provinces of Quebec, Alberta and Nova Scotia and we are getting their perspectives. We've also had some roundtable expert panel discussions, and I notice that the first presentation is the Ontario Paramedic Association. We have had a roundtable where we've had the Ontario Provincial Police, the fire marshal and, as you know, a representative of the emergency measures services in Toronto. They've all been very helpful.

ONTARIO PARAMEDIC ASSOCIATION

The Acting Chair: We begin today's agenda with a presentation from Mr Robert Burgess, president of the Ontario Paramedic Association. Thank you in advance, Mr Burgess, for being here. I think it will be very interesting to have the contribution of the association. Would you proceed with commentary on your part? If you want to leave some time for questions or comments, you can. You have approximately a half-hour.

Mr Robert Burgess: Thank you, Mr Chair and panel. I certainly anticipate that I'll take much less time than that. Thank you for inviting us to participate in this important process. Certainly paramedics have had long-standing experience with emergency issues and disasters throughout Ontario, obviously recently with SARS and other issues that I'll allude to as I go through.

Before I get into some discussion about the actual matter at hand, I just wanted to remind the panel about who the Ontario Paramedic Association is, and give just a brief review of paramedicine in general. Because it is such an evolving profession, it's always worthwhile to update where we are.

The OPA is a voluntary organization that represents close to 2,000 of the practising paramedics in Ontario. Our numbers are increasing yearly. We're not a labour body; we're not a union. However, we do have good working relationships with the labour bodies as well as all the other stakeholders in the profession. In fact, our goal is to be the voice of the profession in general, inclusive of all stakeholders, not just labour.

We have 12 chapters throughout the province, and I consulted with as many of these groups as I could upon hearing of my opportunity last week. So I hope what I bring you today is an opinion from across our province.

Paramedics have evolved greatly over the last 10 years particularly. Early in the 1990s, it was very difficult to find a paramedic outside of the city of Toronto or other urban centres that provided advanced life support. Now, less than 10 years later, the minimum standard for paramedicine across this province is primary care, which means they can perform advanced life support. Beyond that, we have a number of paramedics who practise at a higher level known as advanced care. They can perform many of the procedures that you see in hospitals, when patients are taken to hospitals for care.

We also have a select few critical care paramedics who perform primarily in inter-facility transports, from one ICU to another, for instance. Those paramedics are often used as part of emergency response and disaster response. In fact, many of those paramedics make up the core of the emergency medical assistance team that you're familiar with.

We certainly feel we've gotten away from the phrase "ambulance driver" in the last few years, thanks to the work of many people, some of whom are around this table. Certainly we do a lot more than just drive people to the hospital. We attempt to provide as much care as we can on the way to the hospital.

The Acting Chair: Excuse me just for one second. Along that line, I think it might be important for all of us here that you just explain the term "advanced life support," because I think that's very critical—no pun intended there.

Mr Burgess: Well, it is, and thank you. "Advanced life support" is a term that is used to describe a select level of care that is provided by certain paramedics across the province. I'll give you a few examples that will probably best highlight it.

In the emergency department there are a number of medications that are given by physicians, mostly for the

treatment of cardiac disease. But certainly in the last few years we've added a number of medications to treat things like stroke, head injury, and we're also using some drugs to manage pain and patients who have combative presentations.

As well as that, we perform procedures like intubation, which is sticking a tube down the patient's throat for direct access to the lungs, something you'd normally have done either in an emergency department or in an operating room prior to surgery.

These are skills that a group of people working with the base hospital programs in Ontario, paramedics and service operators feel are important to have available to Ontario patients prior to reaching the door of the hospital.

Educationally, a primary care paramedic has two years of community college training. Those who are selected proceed with one more year of training to advanced care. That training is often done through service-based initiatives. Very few are then selected to carry on with critical care training for a further year.

An exciting addition to our educational programs in Ontario began last year. Ontario's first four-year degree program in paramedicine began at the University of Toronto, in collaboration with Centennial College. We're very excited by that. Certainly we're seeing that the standards for our practice are moving forward at an exponential rate.

Specifically to the matter at hand, then: paramedicine and emergency management. Our experience with SARS in the past year highlighted to everyone here I'm sure that paramedics, like many other health care providers, are front-line health care providers. When I think of our experience with SARS, it becomes evident and obvious that paramedics are canaries in the mine, so to speak.

It may not just be things like infectious disease. It may be a situation like we had downtown this morning, where we had a hostage-taking incident. Often paramedics will get calls to attend for seemingly simple situations and end up in what is often determined in the end to be a disaster. Paramedics have to be equipped to deal with those situations as they arise. They have to be able to define those, understand those and respond to those as necessary.

In emergency medical services there was a feeling, up until about 2001, just before 9/11, that the best way to manage risk was to avoid it. Certainly we've learned that that is a fallacy. You cannot avoid risk. That probably makes good sense to everyone here. The best approach to risk is to prepare. Paramedics have decided—in my opinion, led the charge—to develop a risk management process for disasters that allows us to meet these challenges head-on.

Paramedics will enter hot zones. Hot zones are those areas where the incident is occurring, areas that most people should be evacuated from. If in the unfortunate case paramedics are in the hot zone without the protective equipment they require, they will continue to perform care to the best of their ability.

Fortunately we've had special teams developed over the last few years in response to a number of the in-

cidents that have occurred around the world. We are developing a process whereby specially trained paramedics will be the only ones who enter these hot zones. But it is important for this panel to understand, as you go through your deliberations about this important legislation, that any paramedics, with special training or otherwise, could find themselves in these situations.

When I was looking at and discussing with my colleagues the relationship between our profession and emergency management, I found it quite interesting, when I looked back at some of the incidents that have occurred in the past 10 years or so—which I've summarized on a chart on page 5 of the presentation.

1030

We've noticed that there have been a number of initiatives that have occurred after events. Certainly, I think this is just a normal process, if you will. It happens in most disciplines. You try to prepare, for instance, as best you can, but often what happens is you suffer an incident and then ultimately have to respond.

If you go through these, from the Malton plane crash, for instance, which was our first exposure as a large group of professionals to an incident of that size—it really highlighted the need to have skills in triage and mass casualty management—all the way down to SARS, where we learned something seemingly so basic: that the management of infectious diseases, recognizing those and responding to them is something that has to be part of a core process for us. I think, like all health care providers, infectious disease management is something that we do every day and can become somewhat complacent about. So from a paramedics perspective, it's important that we bring that back on to the radar.

As I mentioned, after 9/11, we had the development of two special teams, mostly in the urban centres—something I'll allude to later on. CBRN teams are chemical, biological, radiological and nuclear teams. They are trained to handle responses to incidents that involve those different entities. Also, the HUSAR team, the heavy urban search and rescue team that was used on the collapse of the theatre just off Yonge Street last year, is designed to go in, again, to these hot zones and remove patients from rather unstable environments.

So what are the challenges that I see for your committee while they deliberate on this important legislation? There are five that we came up with: first, the Ambulance Act; second, communication; third, training; fourth, resource capacity, a big issue in this province; and fifth, the scope of the legislation, either proposed or that you might amend. I'll talk briefly about each of these.

The Ambulance Act: It's important to understand that the Ambulance Act is the only legislation governing paramedicine. Paramedicine is unlike every other health care process in this province. We are not regulated. We are not under the RHPA, and "paramedicine" is not defined anywhere except for an appendix or schedule in the back of the Ambulance Act. This has some ramifications.

If, for instance, we have a large incident in Ontario and you need to call on further capacity, draw people in

to a large disaster, there's no legislation that dictates that a paramedic must remain a paramedic when they no longer work for an ambulance service. In other words, when a paramedic finishes their shift at night and goes home, according to the legislation, they're no longer a paramedic. We act like them, we are paramedics, we consider that we act professionally and do that and follow our standards, but there's nothing in legislation that says that we are, unlike other health care professions that are regulated based on their scope of practice, rather than who they work for. This certainly could have some ramifications related to call-back issues, search capacity and other items that certainly you're much more familiar with than I am.

Also, paramedicine remains a non-essential service. There have been some provisions in some of the collective agreements around the province that have developed paramedicine in somewhat of an essential service process, but the whole issue of essential service still needs to be vetted out.

Communication: I think you'll find it surprising to know that a simple thing like portable radios—I was reading Dr Young's deputation and how he spoke of communication being so important and the various equipment that would be available to the groups working on this process. Portable radios are not mandatory for paramedics to have. It's been something that we've been looking at for a number of years now. It's a very expensive issue, particularly if there's a lot of these rural services.

Beyond that, we don't have any clear redundancy built into our system. When one communication process fails, often there's very little in the way of backup. Paramedics have been known to regularly use their own personal cellphones to complete calls or gain information about situations. So certainly, that's something that needs to be looked at in terms of being able to allow the paramedic to communicate with the incident commander on an event or, in fact, be available for a response to regular care.

Also, we've noticed on a few occasions that it's often difficult to define who the incident commander is. For those of you who are unfamiliar with the IMS process, the incident management system of managing a disaster, the incident commander, as I've described him, is very similar to Supreme Commander Eisenhower, who brought together all of the various organizations and led the charge, resulting in D-Day, as you know. Similarly, in disaster management there needs to be one single voice that directs all of the practitioners, all of the professions, on an incident. That person should have particular and specific training on incident management. Often what happens is that on the day of an incident somebody is assigned who has taken a course or has attended some seminar surrounding incident management. That's a specialty I would very much like to see developed. I don't particularly have concern about where that comes from, whether it's fire-based personnel, police, EMS or some combination thereof, but clearly there needs to be a very specific person who is available

to jump into that incident commander role at a moment's notice.

As you've heard many times through the various deputations about SARS, there was a significant amount of confusion surrounding the messages we received from all government levels during SARS. Some of that was unavoidable because of the systems we had in place at the time. Some of it was because we simply don't have, or don't rely on, the appropriate technology to move out information on a timely basis. In my opinion, on occasion we try to use technology that is too elaborate—Web-based technology etc. That's not always accessible for people, particularly in the north. A simple telephone message that's updated regularly was something we found very helpful in SARS.

Training processes: Paramedics are generally well-trained to handle disasters, and I'm sure you're quite comforted to hear that. However, as I mentioned, we find that specific training often follows an event. It's very difficult to engage various regulators and government officials to understand that we need to plan for events before they happen. They're costly; these disaster exercises cost a lot of money, but really it's the only way that we can properly plan and challenge our own processes to see where the weaknesses are. There's no point in having a disaster exercise that's simply a PR event. We often see those; that's not helpful. We need disaster exercises that find the holes in our system so that we can address those properly.

There is also very little opportunity for us to train with our fire and police colleagues, again because of resource allocation issues. That's important: for us to work together as a team. That's the way the call will be done—again, with the proper incident command structure. Unfortunately, because of the lack of resources in most of the communities, participation in these disaster exercises is often limited to special event/special team-type paramedics who are a very limited, select group of people and may in fact not be available on the day of the incident. Certainly those people need the training; no question. But every paramedic in this province needs to have exposure to these scenarios so they can respond.

Capacity issues: SARS taught us that we need to have a surge capacity. You'll recall that, during SARS in the city of Toronto and the region of York, at one point half of the workforce was quarantined. Some were in a work quarantine situation, which means they could come to work, wear their paraphernalia and go home at night. It's like being grounded: You go to school, you come home, you go to bed. Others were directly quarantined in their home because of exposure issues. We ran into a circumstance where we lost a significant number of our resources to manage everyday calls, the day-to-day calls in the city of Toronto and York region. We did not have good surge capacity to bring people in to cover that. A lot of issues surround that—labour relations issues, service issues, contracts etc—but one of the things I found interesting was that we really don't have a good inventory of resources across this province.

I've left you three charts that follow slide 15, which show you the impact of the quarantine process on the city of Toronto during SARS. What I'd like you to note on slide 16 is that the most common reason for quarantine during that circumstance was exposure to a hospital that had had a SARS patient. If we try to translate that to a bio-terror event, you can imagine what will happen if a number of paramedics, police officers or firefighters enter a zone where there is a hazardous material. If it is infectious in nature, you lose those resources. So you need to be prepared to backfill those.

Some concerns, particularly from the north, about the potential scope of the legislation: There are concerns that if the legislation is worded in such a way that there are significant expectations of some of these small services to have special teams, to have special training, they will not be able to cope without significant resources being added. It may be wise to consider, during your deliberations, the sharing of resources, mutual agreement processes, where you have special teams specifically situated throughout the province that communities can access—much more efficient. Those teams could be trained and keep their skills honed.

1040

Finally, just a review of my recommendations:

Number one, I feel that portable communication devices must be available to all paramedics at all times.

Each community must define their incident command process, or in fact their incident commander.

The relationship between the provincial and municipal governments and other levels of government must be clear before an incident occurs. Certainly during SARS we saw a lot of confusion about from where the paramedics and other health care providers should take their direction. That needs to be spelled out.

An inventory of paramedic and other provider resources needs to be completed. To be honest with you, we're not really sure how many paramedics are in this province. We think there are about 5,500 practising within the Ambulance Act, but there are significantly more who perform medical transport who could be used during a disaster. We don't have an inventory of those people, simply because we don't have a licensing body. We have no idea what their credentials are as well.

Incident management training needs to be ingrained into our teaching programs. It is not very useful to have incident management training as a stand-alone process. You need to have it as part and parcel of the core training of all of these providers, and it needs to be updated regularly.

Participation in disaster exercises must be extended beyond just the special teams and, very importantly, be integrated with fire, police and hospitals, all pieces of the puzzle.

And please remember the reality of differences; please try to recall that there are significant differences between rural and urban EMS systems. We trust that those will be reflected in any proposed or amended legislation.

Thank you.

The Acting Chair: Thank you very much, Mr Burgess. We'll have some questions from members of the committee. We'll start with Mr Zimmer, then Ms Broten.

Mr David Zimmer (Willowdale): I'm unclear from your presentation who organizations like yours report to in an emergency, who you take direction from or who you work for.

Mr Burgess: The association itself is simply a voluntary association that does not have a role, particularly, in emergency management. They're just an association of the paramedics. The paramedics themselves generally work for counties, municipalities or regions and report directly to those groups.

Mr Zimmer: Within those groups in the counties, do they report through the hospital system or through the police system or through the fire department system?

Mr Burgess: There are various models. The municipalities, after downloading, had the authority to choose how their service would be operated. Some chose private operations, like hospitals; or in fact, there are still one or two funeral homes that operate ambulance services in the province. Some chose to take on the responsibility themselves, so report directly to municipal government. Others have amalgamated within the region and have one regional ambulance service, an example being Durham region. So there are still various models. I don't think there are any fire-based models at this point in the province.

Mr Zimmer: But the provision of paramedic services is something that's planned through other institutions, be they hospitals, police, fire departments etc. Am I correct on that?

Mr Burgess: In the provision of paramedic services, the main players involved in that are the emergency health services branch of the Ministry of Health that sets the standards through the Ambulance Act. The municipalities now direct their ambulance service provision. They are responsible to provide that service, however they choose to do that. There are a number of other stakeholders like base hospitals, which look after the medical component. But generally fire departments are an adjunct stakeholder to paramedics.

Mr Zimmer: And will you share your presentation with those institutions that you work with in the regions?

Mr Burgess: Absolutely.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Thank you very much for your presentation. I wanted to get some clarification and pose to you a couple of suggestions that we've heard from other deputants before this committee. It's my understanding that paramedics have been deemed essential workers. Is that right?

Mr Burgess: I do not believe there's anything in legislation yet that deems them essential workers. I may be incorrect, but that's my understanding.

Ms Broten: OK. We've heard from some of our witnesses that we are lacking in that failure to acknowledge how many people really are essential workers during the context of an emergency like SARS, that you really need

to be requesting people to work extended hours above the regular call. I wonder if you could just speak to that in terms of the discussions in your organization during the SARS crisis, as to whether you were down a number of your paramedics, in quarantine certainly, that you had a lack of resources at that time.

Mr Burgess: Absolutely. Only because the paramedics stepped forward and took on the added responsibility did we get through that. In circumstances where you have a protracted event like SARS, there's always the potential risk that you begin to lose your surge capacity. Without legislation like essential service legislation, it's difficult to compel people to be involved in these incidents when there's really nothing that does that. So I think it's an important piece.

Ms Broten: We've also heard from some other professional organizations that they wanted to bring in help from other provinces and the States and that those offers of help were made directly to them but our statutes prohibited taking advantage of those offers of assistance from outside the province. You're nodding your head. Was that also an issue in your field?

Mr Burgess: Absolutely. We had direct offers through our various contacts for individuals to come up and spell off, if you will, paramedics who were working here. Certainly when we were in the circumstance of quarantine with the city of Toronto and York, that would have been extremely helpful. There are a lot of challenges surrounding that—different scopes of practice—but not something we can't overcome. The information-sharing that went on between ourselves and New York state and Michigan was very helpful and certainly in the future we could utilize those resources.

Ms Broten: My last question is picking up on your concept of information. We've also heard that there were perhaps some barriers placed by front-line personnel not having access to information about the patient they were transporting or the hospital they were entering because the different organizational structures weren't speaking to each other. Was that something that you also observed?

Mr Burgess: Absolutely. I talked about the evolution of our profession. In fact, not so many years ago, we were unable to open an envelope containing patient information when we were doing a transport of a patient from one facility to another. It was against the rules to open that information. We simply had to take the information from the nurse verbatim and carry on. Through SARS, that process changed. Now, as you may be aware, paramedics work directly with the hospitals to authorize transport for patients from one facility to another to ensure that if they are presenting with an infectious disease, the paramedics and the receiving hospital are both prepared for that. So we've made some strides in that area, but it continues to be an ongoing concern. I think bringing these groups together in these various exercises will alleviate a lot of those issues.

Ms Broten: Thank you very much.

Mrs Liz Sandals (Guelph-Wellington): Just a couple of things I want to explore. Back to this issue of non-

essential and the fact that you're not actually recognized as a profession: If I'm understanding your legal status correctly, you only have status through your employment.

Mr Burgess: That's correct.

Mrs Sandals: So you have no status other than through your employment. There's nothing out there that says, "This person is a paramedic by training and is always a paramedic." It's all tied to your employment. In that sort of legislative framework, have you thought at all about—not to get into the argument of whether that's right or wrong, because presumably evolution into a regulated health profession takes a long time legislatively. In our context, which is looking at emergency situations, have you thought about how you would overcome the fact that you're not a recognized profession but you need to be an essential worker in the context of an emergency? Have you thought about how you would address that legislatively?

Mr Burgess: Our group, working with a number of stakeholders, has decided to take on the question of self-regulation. We know it's a long process. We are exploring that now and hope to have a report to the minister by this fall on where the profession stands on that issue.

1050

In terms of disaster management issues, to be honest with you, I haven't had a lot of thought about how we would manage the need for large numbers of paramedics, should a disaster occur and if in fact somebody holds up legislation and says, "Well, we don't have to be involved, simply because we're not at work right now." Personally, I'm quite confident to say I don't think that would happen. You'd have to turn them away, frankly. But if we want to talk paper, that's a possibility.

Mrs Sandals: I guess that's something, then, that the committee has to struggle with: How do you have that emergency essential worker status?

The other thing I find quite interesting is on slide 16 on page 8, where you look at exposure and how it was that people became quarantined. The vast majority, about three quarters, were exposed at a hospital. So it wasn't direct exposure during patient transport; it was merely the fact that you were in and out of a hospital. Perhaps that's not surprising, because that's how most of the exposure happened during SARS, through cross-transfer at hospitals. Have you thought at all about how that could be reduced as a risk?

Mr Burgess: Absolutely. We learned very clearly that paramedics need to be very vigilant about going into these situations and being prepared. There's no question that our management of infectious disease in health care was highlighted as an area that was lacking, and we've learned from that. Now when paramedics go to a patient or to an area that is potentially infectious, they are protected. My assumption is that if something like this were to happen again, the overall impact would be lessened as a result of those processes.

The other issue I referred to was to have these specialized teams with the proper equipment go in and do

an assessment evaluation before letting the regular paramedics enter the area.

Mrs Sandals: There has been some work done in this area in response to this statistic?

Mr Burgess: Absolutely.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Just a little detail on the incident commander issue: You mentioned on chart 13 that the incident commander is not always evident, obviously, in some situations, and you'd like to see it probably in all situations.

Mr Burgess: Yes, and my reference to that was particularly in terms of early on in an event, when people are still trying to decide who in fact is going to be the incident commander.

Mr Brownell: Is it through training that they're identified before heading out to the scene? I'm not quite sure how they're identified when they get to a scene.

Mr Burgess: There could be a number of ways. Often, what will happen initially, and this is probably the appropriate tack, is that each service has their own incident command structure and then they organize and decide what type of incident this is—is it a police incident, a fire incident, an EMS incident—and then put that person in charge.

During that period, things are a bit vulnerable and that's when communication can be lost between the top and the bottom. Paramedics are trained to identify their direct supervisor as the initial incident command person at the scene. Again, because of quick identification, that's appropriate, but this ongoing detail about incident command is something that I think needs to be addressed, particularly among the heads of these various agencies.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): If I can just refer to slide 20 under your recommendations. If you would, just give me some information or a little more explanation on recommendation 3: "The relationship between the provincial and municipal governments in times of an emergency must be defined prior to an incident." Within our existing legislation, the municipalities have the capacity to declare emergencies; they have responsibilities for that. The province has, on a provincial scale, the capacity to undertake provincial emergency initiatives. I'd have to think that in part, these types of issues might be who's in charge, what roles they're going to play and at what point there is an escalation in a local emergency that might require provincial intervention.

If you could help me; as I said, the recommendation is a little bit generic, so some context would help.

Mr Burgess: Certainly. In terms of an example, when a disaster becomes such that the province decides that it needs to declare an emergency or go through whatever process they do, there certainly is a shift in the level of reporting and responsibility from the municipal services that are offered. In day-to-day operation, the paramedics are only responsible to the municipalities or counties that they serve. We found during SARS that other entities came to the table. The province came to the table, as was appropriate, but it was an unusual circumstance and something that took a while to get used to. And because

we were receiving mixed messages, it became difficult to determine in what direction, in some cases, we should proceed.

My suggestion relates to the fact that perhaps through some sort of tabletop process, this could be spelled out a little more clearly in the proposed legislation.

Mr Arthurs: So when the province becomes more fully engaged, maybe even if it's not considered a provincial-scale emergency, there may be a need for the province to have a more substantive role and thus the reporting around a tabletop structure would help EMS understanding at that point, and reduce any confusion as to what their reporting relation is going to be for the remainder of that time frame.

Mr Burgess: Absolutely.

Mr Peter Kormos (Niagara Centre): I'm interested in the four-year U of T program, and also the minimum two years' education—two, three, four years. What's the salary range of paramedics in the province, in view of what is a considerable and intensive and expensive period of training?

Mr Burgess: Thank you for asking that question. I certainly am pleased to report that there recently has been what I term a market correction with paramedics. If you talk to municipalities, they'll tell you that they're quite surprised at the quality of care that's offered by paramedics and in fact what that means for the market. They certainly undervalued their professionals.

The salary scale that we see for a primary care paramedic can range anywhere from around \$25 an hour up to \$35 an hour closer to urban centres. So compared to other professions, we're entering the ballpark but we're not seeing the home plate yet. I think, given our education, the opportunity for paramedics to improve their lot in that area is something we'll see going forward.

Mr Kormos: Let's get this clear: As a member of the Ontario community, can I presume that anybody in an ambulance is at least a primary care paramedic?

Mr Burgess: Anybody in an ambulance that is governed under the Ambulance Act. Most interestingly, and I find this perhaps the most germane point of the evolution of our profession now, the Ambulance Act says that you can't get into your car, Mr Kormos, after the deliberations today and call it an ambulance. That's against the law. But you can certainly get in that car and call yourself a paramedic, if you want, because nothing is stopping you.

So if an ambulance pulls up and it's directed by an ambulance service and a paramedic gets out, the minimum standard is a primary care paramedic. The caveat is that there are some underserved areas in the north that still rely on emergency medical responders to assist with those primary care paramedics. But there certainly will be at least one in that ambulance.

Mr Kormos: That's interesting, because that's where I was getting to. We've got the Ontario fire marshal's office, which can go into a community, audit the fire prevention firefighting services and then make recommendations around adequacy. Is there a parallel? Do

communities have any resource like that provincially so that communities know—and again, from your profession's perspective, the leverage you've got when you have authority saying, "Whoa. You're seriously understaffed; you're seriously underequipped; you're seriously undertrained." Do we have that in the province?

Mr Burgess: The province's mechanism is that every five years, the province does a review of each service using peers. That's been a very positive experience. The service operators exchange information and travel from place to place to see each other's operations, and also measure their qualities against set standards. I've found that to be a very positive experience, one that has led to improvements throughout the province.

There isn't a mechanism yet to have a truly objective third party or one of the associations—perhaps ours or the association of EMS directors—participate in that accreditation, if you will.

Mr Kormos: Is that an important thing, in your view?

Mr Burgess: Absolutely. That would also be very similar to other health care professions that do internal accreditation.

Mr Kormos: One of the things I've observed over the last few weeks is that there are two worlds in Ontario: There's Toronto, and then there's the rest of Ontario. Toronto, of course, because of the scale and the resources it has, has things its professionals can work with, whether they're firefighters, police officers or emergency medical response personnel, that small-town Ontario doesn't have.

1100

Mr Burgess: That's right.

Mr Kormos: That, to me, is a dilemma, and that goes, of course, to levels of funding, doesn't it?

Mr Burgess: It absolutely does. It's interesting; I just returned from the Association of Municipalities of Ontario conference. Clearly, the hot-button issue is lack of funding from the province to support some of the municipalities, or at least the funding formula needs to be addressed to deal with that. Two reasons: One is the level of expertise, and the fact that no one could really predict what the cost of EMS was going to be for these municipalities.

Mr Kormos: Perhaps you'd introduce us to the young man you've brought here today.

Mr Burgess: This is my son, Jonathan Burgess, who does a very good job of keeping me in line.

Mr Kormos: Thank you, sir. Good to meet you, Jonathan.

The Acting Chair: Just a couple of questions before we finish up here. Mr Burgess, you've made some specific recommendations on behalf of the association. As you said, you're representing a cross-section of paramedics in 12 different communities, and you feel that we, as a committee, would enhance the work of paramedics if we looked at legislation that would ensure that there is provincial identification of an incident manager, for instance; that the process right now is very vague and,

at a time of crisis, it's open to interpretation, basically. So you're wondering, who's in charge?

Mr Burgess: Absolutely.

The Acting Chair: That is something that others have mentioned to us; even Dr Young mentioned that.

The other key recommendation I think you've made is that there has to be some kind of ongoing training in a meaningful way to prepare emergency providers with the background necessary when an emergency does hit. That is not there right now; it's not systematic.

Mr Burgess: That's correct; it is not systematic.

The Acting Chair: OK. Also, for some reason, we don't allow help from outside, or it's very difficult to get help from outside the Ontario jurisdiction to come in here. New York state has offered, yet right now, the way Ontario legislation is, or lack of legislation, we can't even accept outside help.

Mr Burgess: Correct. It would be, during these incidents, very helpful to have people come in and participate.

The Acting Chair: The final thing is, I noticed in your presentation that you're the senior manager of Sunnybrook and Women's College health centre.

Mr Burgess: That's correct.

The Acting Chair: You're still there?

Mr Burgess: I am. I manage the base hospital program there.

The Acting Chair: Actually, Mr Kormos and I have something in common: We worked with a colleague of yours up there, Dr Verbeek—

Mr Burgess: I know Dr Verbeek well.

The Acting Chair: —on the portable heart defibrillators. We tried to convince a committee of this Legislature in the last year or so to introduce—because the paramedics across this province were asking us to make those portable heart defibrillators especially available in rural communities. We didn't have success convincing our colleagues at that time that they were necessary equipment to have, but we are continuing to work on that.

I was just thinking we should maybe, as a committee, get someone like Dr Verbeek to appear before this committee, given that he's the front-line manager. I don't think he's in that post any longer.

Mr Burgess: Dr Brian Schwartz is the director of base hospital services for the city of Toronto. Interestingly, Dr Verbeek, who you do know well, was the key medical director during the SARS issue for the providers. He was the one who worked with public health, determining issues related to quarantine. So I think his opinion would be quite useful here.

The Acting Chair: He has very strong and straight opinions.

Mr Burgess: Without question.

The Acting Chair: Anyway, perhaps the committee might make it possible. Even at a later date, perhaps, we can bring in Dr Richard Verbeek—he's at Sunnybrook and Women's College health services centre—to make a deputation before this committee. That would be helpful.

Thank you very much, and thanks on behalf of the committee to all the paramedics across Ontario for the great work they did during SARS etc. We certainly couldn't have done it without the front-line people like yourself and all the people you represent who did that most important work.

Thank you for taking time to be here, and thank you to your son for taking time from his busy schedule to be here. Make sure dad gets straight home or straight to work, wherever he's got to go.

CANADIAN RED CROSS, ONTARIO ZONE

The Acting Chair: The next presentation is from the Canadian Red Cross. We've got two presenters here: Gordon Moore is the general manager, Canadian Red Cross, Ontario zone, and Steven Armstrong is the manager, disaster and international services, Canadian Red Cross, Ontario zone. Sorry to keep you waiting but we're running a little bit behind. Thank you for being here.

It's the same format. We have until 12 noon—excuse me, we don't have until 12 noon. We've got about half an hour, because we have the Dairy Farmers of Ontario to present too, so if you could give a presentation, then we'll ask questions or make comments. Identify yourself before you speak so we can record it for Hansard, as all our deputations are recorded verbatim in our Hansard transcripts. Thank you.

Mr Gordon Moore: My name is Gord Moore. I'm general manager of the Canadian Red Cross, Ontario zone, and with me is Steve Armstrong, manager of our disaster services and international services programs for the Ontario zone. Also with us this morning at the back of the room is Pamela Davie, our director of public affairs.

The Acting Chair: Pamela can come and sit up here if she wants.

Interjection.

The Acting Chair: OK. I just wanted to make sure that the invitation was made.

Mr Moore: I'm sure she feels welcome. Thank you.

Mr Chairman and members of the committee, good morning, and thank you for this opportunity to make a deputation as you consider what we consider to be a very important subject.

We're pleased to speak with you about what we see as the most significant issues that currently impact the cohesive delivery of disaster response in Ontario. When I speak of disaster response in terms of what it means to the Red Cross, I describe it as the assistance provided outside of the "yellow tape" of a disaster site. Emergency Management Ontario, police, fire and paramedics play a crucial and immediate role inside the yellow tape. We fulfill the urgent role of helping victims cope in the relief phase as well as supporting longer-term recovery.

The Red Cross agrees with and acknowledges that government has the primary role for disaster preparedness and response. What we want to do is support the government by sharing our lessons learned and assisting

civil authorities in developing and implementing emergency preparedness and disaster mitigation activities.

What we want to bring to your attention in our deputation is the challenge posed in dealing with several ministries and between municipalities and the province in all phases of a disaster.

If I may, I would like to refer briefly to some text from a previous deputation that was made a few days ago to this committee when the representative from the Ministry of Municipal Affairs and Housing, Ms Diana Jardine, appeared.

The Acting Chair, in the question period, said, "I have just one last question myself, and that is that you mentioned that one of the failings you found is that the federal government doesn't have a one-window approach, that it's difficult in deciding whom to go to and who makes the decisions."

And further down in that same exchange, he again says, "As much as we can criticize the feds, I think maybe one of the duties of this committee would be to help your ministry and other ministries put forward the protocol, that one-window approach, and to define it a little bit better."

To that, we would say, "Here, here." We urge you to proceed with that.

Please note that we have included some examples to illustrate our points. These are not meant as criticisms but rather to demonstrate why we want to work together to improve coordination of disaster preparedness and relief.

Responding to disasters and conflict, whether domestically or internationally, is one of the cornerstones of the society's mission: "... to improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world." The Red Cross is mandated by federal legislation as an auxiliary to civil authorities in disaster relief.

Unfortunately, the Red Cross and all emergency management agencies have had more experience in recent years than we would have ever dreamed possible: Y2K planning; September 11; floods and fires in northern Ontario; SARS; power blackouts; BC forest fires; the Pelee Island air crash; more recently, of course, the Peterborough floods; and providing assistance to 18,000 individuals in Canada who were removed from their homes in the last year due to small-scale personal disasters such as house fires.

The 7,000 Red Cross disaster services volunteers in Canada are well prepared through training, formal exercises and responses. Unfortunately for those made vulnerable by disaster, our volunteers have gained a wealth of disaster management experience.

A case in point is the ongoing response to the Peterborough floods, where 300 Red Cross volunteers from across the province have invested over 4,000 hours to ensure that we meet the needs of those made vulnerable by that disaster.

1110

During a response to a disaster, Red Cross works within the framework of local disaster plans to provide

relief assistance to those affected by addressing their immediate basic needs; for example, shelter, food, clothing, personal hygiene, items of that nature. In the recovery phase, the Red Cross assists those who have the least capacity to restart their lives because they are living perhaps in poverty or are otherwise deemed to be among the most vulnerable. There will always be unique cases and unforeseen gaps in official plans and responses, and our mandate is to ensure that those gaps are filled. We saw this during the SARS response and we're starting to see it in the Peterborough response as well.

This leads us to the main point of our deputation: our recommendations to address the challenges of dealing across ministries and between municipalities and the province in all phases of a disaster.

The Ministry of Municipal Affairs and Housing commissioned Dr Susan Corlett to review the 1998 ice storm recovery operations. The report, released in 2000, made a number of recommendations that relate to Red Cross, and the report is included in your package. I'll just refer to a couple of recommendations that pertain to us.

The Corlett report recommended that the government of Ontario do the following:

- (1) Designate Red Cross as the key provider of assistance to citizens during the emergency phase of a disaster;
- (2) Establish an accord with Red Cross regarding roles and expectations during an emergency; and
- (3) Assist Red Cross in establishing a formal agreement with each municipality to be incorporated into local emergency planning.

We emphasize these three recommendations because currently, for our role in disaster management and response, it may be necessary to deal with several ministries, and frequently with two levels of government. These are community safety and correctional services through EMO; municipal affairs and housing; community and social services; health and long-term care, as was the example in the SARS response; as well as municipalities, which are responsible for managing a response in their jurisdiction but are subject to provincial approval and oversight for expenditures and the Ontario disaster relief assistance program.

The clarification and resolution of financial responsibilities is one example of how Red Cross is caught in the middle when trying to resolve operational and funding issues. In Ontario alone, we invest \$2.5 million annually into developing and maintaining our response capacity. However, our disaster services program is not financially self-sufficient and, quite frankly, we struggle to cover those costs.

We are not here to request financial support—I wanted to make that clear—but rather to ask for recognition that there is a cost to building capacity and that there needs to be a provincial-municipal clarification of who is responsible for covering these costs. Municipalities feel that disaster preparedness is a provincial responsibility and the province says it is a municipal responsibility.

Municipalities request that Red Cross take on a range of responsibilities within their emergency response plans.

As documented in Hansard, your committee has heard from the municipal panel that some municipalities are wondering why Red Cross is asking for financial support in order to build capacity to respond in their communities. We want to clarify that it is not the intention of Red Cross to charge retainers or standby fees for the provision of our disaster services. We meet with municipalities to establish the types and levels of service they require or are requesting of us. We measure the cost to provide the requested services and then develop with them a plan and a budget to meet their expectations. We do request that municipalities contribute to meeting these costs to ensure that they will be able to meet their legislated responsibilities. We believe that these are sound management practices.

An investment in capacity, as an example, means recruiting and training a volunteer like Robin Bondy, a resident of Windsor, who managed the Peterborough floods response for three weeks, overseeing a team of 50 people and a sizeable operational budget. Robin brought experience from BC forest fires, September 11, where she was deployed for three weeks, and the Pelee Island air crash to her most recent role in Peterborough. The cost of training a senior-level disaster services volunteer like Robin is under \$5,000, but to us it's a very real cost.

Our experience is that municipalities feel these costs are reasonable and justifiable but that they should be covered at the provincial level and not downloaded to the municipality.

The provincial government did come forward and invest in local capacity building. Two years ago, the province announced and developed the CERV program to build a network of community-based volunteer teams throughout the province with a mandate to assist with responses to disasters.

We believe, and we did express this at the time to the commissioner of public safety, that this capacity already existed in the form of Red Cross and other agency volunteers. A portion of the resources that were allocated to developing and implementing the CERV program, Red Cross and our NGO partners, such as St John Ambulance, the Salvation Army and others, could have significantly increased existing networks of community-based volunteer teams.

When it comes to the reimbursement of costs related to a disaster operation, we try to clarify the situation at the outset in our discussions with government. Often, in a disaster situation it is unclear as to what is considered an eligible cost or expense. For example, with the SARS response, it took up to a year to receive clarification on eligible expenses before we were fully reimbursed. This is not necessary and we believe it is definitely preventable.

We respectfully suggest that the issues noted in our presentation could have been largely resolved by implementing the recommendations of the Corlett report.

The solution to these challenges is to clearly delineate expectations and the areas of responsibility and authority in advance. Just as a side note, during the last three

disasters or so in Ontario, including SARS and Peterborough, we found ourselves having discussions with the municipality and the government as to who is responsible for what and who's going to pay what expenses. It doesn't need to be that way. If there's an agreement in advance, it's to benefit all parties.

The Red Cross has submitted these recommendations to the government of Ontario in the following documents: Discussion Paper for the Provision of Canadian Red Cross, Ontario Zone—Disaster Services Support to the Province of Ontario, which was dated June 2001. We also made a submission in person to senior staff in the Premier's office called Investment in Red Cross Disaster Response Capabilities, in October 2002.

As well, you will find in your packages letters of support for these proposals from the Association of Municipalities of Ontario, AMO, which was referred to in the last presentation. In fact twice, under two different presidents, the AMO board has passed resolutions to send to the Premier of Ontario a letter urging that the province do an agreement with Red Cross.

The Red Cross thanks you for this opportunity to present to you today. In conclusion, I want to reiterate that we recognize the provincial government's role in the overall management of a disaster. It is in our role that we express the desire to find solutions to these issues we've outlined today.

Thank you very much. Steve will probably answer most of your questions.

The Acting Chair: We'll start with Mr Kormos.

Mr Kormos: How much time have we got?

The Acting Chair: We've got 15 minutes.

Mr Kormos: Oh, good.

Thank you kindly. Of course, the most recent disaster in Ontario was in the area of home care administered by CCACs when Red Cross, St Elizabeth Visiting Nurses' Association and the Victorian Order of Nurses—three historic non-profit, community-based home care providers—were squeezed out of the picture in yet another round of so-called managed competition because this government persists in maintaining the Tory model of privatizing home care. But I read in your annual report your position on neutrality, so it's better that I said that than you.

The Acting Chair: Don't put words in his mouth.

1120

Mr Kormos: But I can read his mind and I think the government members can too.

Look, I read with interest the Ipsos-Reid material you included, and I want to get to the letters from AMO. How do you account—I found it interesting—for the age element, in terms of the response? Older people were more familiar or identified more with Sally Ann, because Salvation Army came second to Red Cross; younger people, more so with the Red Cross.

What about the regional disparity? I noticed that in Hamilton-Niagara, Red Cross was the first choice at 41%, contrasted with, let's say, eastern Ontario at 76% and Northern Ontario at 85%. Did you do any analysis of that and why there would be those regional disparities?

Mr Steve Armstrong: Principally, it's the profile of the Red Cross office in the community. In the larger urban areas, our office can sometimes be overwhelmed in the fray of other organizations. In smaller communities, we do take a higher profile. Generally, within the small weekly presses, our operations get more media play, which therefore raises our profile within the community.

Mr Kormos: OK. Now, two letters—

Mr Moore: That survey was done after we exited from the blood collection program. We did the survey to find out what the general public's feeling was toward Red Cross. We were very pleased with those results, where 93% of Canadians still have a warm, fuzzy feeling toward Red Cross.

What we felt was that, in the older population, of course, many people who were involved in the Second World War were directly affected by our work in the field. Also, as Steve pointed out, in some smaller communities, if there was particularly a lot of attention to some aspect of our role in the blood situation, there might have been more negative publicity affecting those results.

Mr Kormos: OK. Now, attached to that, of course, are the two letters from AMO to Turnbull and then Runciman. What's been the net result of those submissions?

Mr Moore: Ongoing meetings, discussions, negotiations, but no agreement yet.

Mr Kormos: This relates to the recommendations that you refer to on the final page of your submission today, a discussion paper for the provision of Canadian Red Cross, Ontario zone disaster services, June 14, 2001 and October 22, 2002?

Mr Moore: Yes, and the Corlett report.

Mr Kormos: So is work being done in the ministries around this issue that you're aware of?

Mr Moore: Yes. We don't wish to cast aspersions.

Mr Kormos: I'll do that.

Mr Moore: OK. We have been working with the province for over two years in discussions regarding a disaster response agreement with Red Cross. The meetings are ongoing. We have had meetings with two Ministers of Municipal Affairs and Housing, now former ministers. We've had recent meetings with Municipal Affairs and Housing, but they were mainly regarding Peterborough. We had the one meeting referred to a couple years ago with senior staff in the Premier's office on this issue, and we've had two or three meetings with Dr Young and members of his staff.

Mr Kormos: What's the obstacle? What's the problem?

Mr Moore: We would like to know.

Mr Kormos: What do you sense?

Mr Moore: Early on in these discussions, we were suggesting that the province should play a role in what I mentioned in my presentation, and that is in capacity-building. We can sustain our current level of disaster preparedness and training. The challenge for us is in building that in preparation for a larger disaster response or for many at one time. There was a situation last summer

where we were very near capacity, when there were about five events occurring all at once in the province. One was the Pope's visit. Fortunately, there were no occurrences during that, because that would have stretched us to the hilt, if there'd been a response required there.

Mr Kormos: Of course, there was Dennis Mills and the Rolling Stones, which did neither of them any good, at the end of the day.

Mr Moore: That too. So, initially, in our discussions with the province, we were suggesting that the province play a role in supporting capacity-building in a financial way. The response was that there was no money available. We've pretty much taken that off the table now in our discussions, but we are still saying, as we said in our presentation, that there is a cost. There is a requirement for financial support. We're doing the best we can, but increasing that capacity is a financial challenge. We would ask that you recognize that and determine whether it's the province or municipalities who should play a role in assisting. I think that's been one of the obstacles.

Mr Kormos: In closing—this isn't a question as much as an observation—one of my concerns about Red Cross being squeezed out of the home care programs is that, of course, that could diminish the staffing of a given region. Home care providers, being health professionals, although not instantly or in the first instance identified as disaster relief people, it seems to me could at the end of the day become part of that same team because of the skills they have. That's why, I say to government members, the foolhardiness of squeezing non-profit, historic home care providers like Red Cross, Victorian Order of Nurses and St Elizabeth visiting nurses out of the CCAC home care process has ramifications far beyond just the home care provision; it impacts on these organizations and their ability to serve us in other ways.

Mr Zimmer: I have two questions. You've talked about the need for a one-window approach; you've stressed coordination, initiatives and planning; you've used the expression that Red Cross often gets caught "in the middle;" and you have concerns about responsibility for costs of response to a disaster. My first question is, has Red Cross's response to any particular disastrous situation ever been held up or delayed in any way pending the determination of the responsibilities for the cost of responding to that particular disaster? Are there any examples of that?

Mr Armstrong: The Red Cross has never stopped a response because of a financial question. We've always responded and then we've dealt with it after the fact.

Mr Zimmer: All right. My second question, then, is, can you give me in priority—one, two, three—obstacles in the view of Red Cross to this one-window approach, of sorting out the responsibility for costs, the not-getting-caught-in-the-middle issue? Your three top obstacles.

Mr Armstrong: Principally, the first obstacle is we generally respond within the municipal structure, because they declare the disaster in an emergency. Then the next step is if—

Mr Zimmer: How is that an obstacle?

Mr Armstrong: Because they don't necessarily have the authority to expend funds, and if they invoke the ODRAP, the Ontario disaster recovery assistance program, and a financial cost recovery through the province, very seldom are individual municipalities aware of the terms of eligible costs that are involved with that. So they have to jump through the hoops with municipal affairs while we're expending funds on their behalf, unsure of our ability to recover those costs.

Mr Zimmer: How would you repair the obstacle?

Mr Armstrong: One way would be having a clearly defined agreement with the municipalities and with the province saying what are eligible costs, when they can be incurred and on whose authority, and then a reasonable way of how to recover those costs.

Mr Zimmer: Your second obstacle?

Mr Moore: I could mention one or two. We found this with Peterborough. We started an appeal to raise funds within 24 hours of that disaster happening. After about four days, we had some potential donors calling, many corporations, saying, "We understand that money raised by the city of Peterborough could be matched 2 to 1 by the province. Is your money being matched 2 to 1 by the province?" At that time, we didn't have an agreement with the province, we didn't have a formal agreement with the city of Peterborough, and that was an obstacle for a short time, about a couple of days.

Mr Zimmer: How would you address that obstacle?

Mr Moore: Let's have an agreement outlining—one of the recommendations also, I believe, in the Corlett report is that we be designated as the fundraising arm in a disaster response, which we do. We did that in Peterborough.

Mr Zimmer: And the third obstacle?

Mr Moore: I was going to comment on ODRAP and Peterborough, but do you have any other comment on the obstacles?

1130

Mr Armstrong: One of the obstacles—and it does follow with the ODRAP. An example can be used and an analogy can be drawn from Peterborough. Two years ago a similar disaster, a flood on a smaller scale, happened in Peterborough. It repeated this time. Unluckily for the people who were affected, but luckily for the city and for Red Cross, we learned our lessons the first time. So the city was a lot faster out of the blocks as far as response and declaring an emergency quickly, accessing the provincial funding, accessing the Ontario disaster recovery assistance program, and using organizations like Red Cross and others to their first and best use, right at the beginning of the disaster.

Generally, one of our impressions is, if we haven't worked with the municipality or an organization before, there are two levels of expectation: (1) they think Red Cross can't do anything, because they don't understand us; or (2) they think we can do everything. Neither one is true. It's somewhere in the middle. So we need to have a level of understanding and a level of education. I would

go back to your previous deputation from the paramedic's association, where familiarity, exercising and knowing people in advance is a lot more effective than trying to figure it out in the heat of the response. One of our volunteers often says, "You would rather sit with somebody you don't like than someone you don't know." So if we know people and we work well with people, then we're better off down the road.

Mr Moore: Mr Zimmer, if I could make one further comment on obstacles, we talked about our desire to write an agreement with the province. At the present time, an agreement to cover all of the things we do in a disaster response would require us to write agreements with three different ministries, and maybe four.

Mr Zimmer: All right. Thank you very much.

Mrs Sandals: You've mentioned this whole area of agreements with municipalities or agreements with the province. I understood from some testimony from someone else some other day that, in some cases, municipalities do have agreements with you. Is that correct? How many municipalities would you have agreements with now?

Mr Armstrong: Formal agreements, I believe, about 20, to various degrees of service provision.

Mrs Sandals: And are there other municipalities where you have an informal arrangement but not a formal agreement?

Mr Armstrong: Generally, if it's an informal one, it refers to the service that we would provide in a time of disaster. Quite often what we find too is that municipalities or hospitals or other organizations write us into their plans and don't let us know that that's happening.

There is an example of a municipality in Ontario where three different hospitals had written us into their plans to provide volunteers to support them during their operations, and we weren't aware of it. The three hospitals in the community didn't know that each had done it, and neither did we.

So when they're informal, sometimes they're a bit tentative, at best, about our ability to respond.

Mr Moore: While there are only 20 formal agreements, we are mentioned in probably 90% of municipalities' response plans.

Mrs Sandals: Now, are there other organizations with which other municipalities would have formal or informal agreements?

Mr Armstrong: Often Salvation Army, St John Ambulance. I think the example that was used was Sarnia; they were using a Rotary Club at one time for a reception centre operation. I think that agreement has gone by the wayside in past years.

One thing we do try to ensure is that—we would like to be the organization to provide those services, but we'll work with whomever is out there. We won't compete with—if there's already an agreement in place with somebody, we're not going to try to push them out of the way. We want to work together. As long as it's covered and as long as there's a plan in place, that's our main goal.

Mrs Sandals: You're actually anticipating my next question, which is, if some municipalities have the local responsibility for management of an emergency, for whatever reason—and it may just be whichever organization happens to be larger locally because, as you say, it varies from area to area—what would be the effect of a provincial agreement? Because you're suggesting there should be a provincial agreement making you a lead agency but, clearly, the province would then be, to some degree, treading on the choices that municipalities, who have the primary responsibility for the plan, would be making. I'm wondering how you would see that dynamic unfolding, if what you're requesting were to happen.

Mr Armstrong: I think there are two requests, ma'am. One is an agreement with the province in the delivery of disaster services for the provincial level and supporting the various ministries, and the other is assistance with developing agreements with municipalities. If a municipality chose to go to another agency or develop an in-house capacity, I think that's well within their purview. We would strongly suggest that we're as good at it as anybody else and have the most experience, but if a municipality chooses to go somewhere else, it's their emergency plan, it's their responsibility under the act—and we could provide that service.

Mr Moore: I think we're not looking to provide this service to the exclusion of all others; quite the contrary. Because of our experience worldwide in disaster response and the resources we can bring to the table in a major response from other jurisdictions, other provinces or the American Red Cross or wherever, typically we cover disaster response outside the yellow tape, complete. I'm not aware of any other organization that does. So frequently we play a coordinating role, still working with these other volunteer organizations. We did that in Peterborough with the Salvation Army. We worked very well together.

Mrs Sandals: OK. You mentioned the problem of interministerial, interlevel communications and confusion. Do you have any suggestions there? Obviously, this is a theme that seems to be emerging from a number of witnesses: Who's the lead? Do you have any suggestions to offer there?

Mr Armstrong: I would suggest, as a professional disaster manager, that there needs to be someone to be appointed in the lead, and then you draw on your best resources. Whichever ministry is at the point of managing a response to an emergency or a disaster should bring in the other people. If you use the model of an instant command system, everyone knows that whoever is in charge is in charge, but the support team, be it Emergency Management Ontario, the Ministry of Health, or in some cases in the north it's the Ministry of Natural Resources, has a strong input into that. But at the beginning and at the end of the day, someone has to be in charge. There are models out there from across Canada and certainly from the States that could be easily examined to see what benefit they could bring to the province of Ontario. But someone needs to be the co-

ordinator of all that information, and I would suggest it would likely be Emergency Management.

Mrs Sandals: Thank you very much.

The Acting Chair: Just in closing, I guess the one thing you've emphatically stated is that we do not have a one-window approach here in Ontario. As professional front-line managers of disaster relief, you find that's not facilitating your work; you need some kind of one-window approach. And then you also need a designation of who's in charge. You don't care whether it's one ministry or another, but one of the ministries or one of the agencies, preferably a provincial agency, has to be clearly designated as in charge. The question I have is, could it be, for instance, interchangeable? For instance, if you've got a disaster in Sioux Lookout, God forbid, or whatever it is, or in a remote northern community, in Pickle Lake, it may not be Municipal Affairs, but it could be designated that MNR be the lead. Would that work?

Mr Moore: I think that is what has been happening, to some degree. In Peterborough, for example, it's been mainly Municipal Affairs and Housing. The SARS response was the Ministry of Health, and so on. Sorry, even there, Public Safety was heavily involved in SARS as well.

But yes, I think, depending on the nature of the disaster, it doesn't always have to be the same ministry. Wouldn't you agree, Steve?

Mr Armstrong: Whichever ministry it is, they also have to have some say and control over the gamut of the response, which includes the financial impact of it. Because that's where we get hung up. Someone's in charge of the response, but someone else is in charge of paying the bills, and there's a disconnect between the two pieces. That's where we struggle.

Again, we have to say that we do not stop a response or do not respond to a request for assistance because there's a financial question. But that creates a huge burden for the Red Cross Society and other agencies to try to jump through those hoops to figure out who's going to pay the bills at the end of the day, and hopefully we're not bankrupting ourselves in the response.

The Acting Chair: So that causes that ambiguity or lack of clarity which is—in essence, you still do your job, but it is an obstacle that you would like us, as a committee, to look at mitigating or eliminating as best as possible.

Mr Moore: We find we're discussing these issues in the middle of a response. It happened with SARS.

The Acting Chair: It takes you away from the work at hand.

Mr Moore: And we prepared an MOU about four days into SARS, and the government told us, "We just don't have time to deal with this right now." The MOU was only five pages.

But we wouldn't have to do anything if we had an agreement prior that stipulated what your expectations of us are, what kinds of costs that we incur you will reimburse or exclude and that sort of thing. This can all be done ahead of time. We went through it again with

Peterborough. We're meeting in the middle of the response, trying to discuss these issues. It's not a sensible way to do business.

1140

The Acting Chair: Thank you for that. One quick comment and then we have our next presenters.

Mr Zimmer: Just one quick comment. To get around this question of who is going to pay what in the face of a crisis, if there were some mechanism to the effect that reasonable costs incurred by the Red Cross in good faith, or some process for indemnification, and there were some sort of upfront piece of legislation that said that reasonable costs incurred by an entity like Red Cross would be indemnified by a government agency, you wouldn't have to go through this "Who is going to pay what?"

Mr Armstrong: That's exactly right. We're an extremely cost-effective organization. In SARS we supported 10,000 people quarantined in their homes and it cost us \$77,000, and that was deploying 400 people for about a month and a half. I would purport that that was the cheapest bill the province of Ontario got.

Mr Kormos: Mr Chair, very important: You heard the phrase used during this submission, "You'd rather sit with someone you don't like than someone you don't know." I want the government members to remember that when they start to lose patience with me.

The Acting Chair: On behalf of the committee, I think it would be remiss if we didn't thank the Red Cross for the incredible work you've done for years, and continue to do, on behalf of the people of Ontario in times of real need. Sometimes we take organizations like the Red Cross or the Salvation Army for granted, as sometimes happens by government here, just assuming you're going to be part of the response team without understanding that there's the reality of having that infrastructure in place and investing in it and maintaining it. So again I express our deep appreciation, on behalf of this committee, for the great work the Red Cross has always done and that we hope you continue to do. Hopefully, as a committee, we can help you to do even better work.

Mr Moore: Thanks again for the opportunity.

Mr Kormos: Thank you, gentlemen. Keep the pressure on the CCACs, please.

DAIRY FARMERS OF ONTARIO

The Acting Chair: The next presentation is from the Dairy Farmers of Ontario. They're going to set up a PowerPoint presentation. With us we have Bob Bishop, the general manager and chief executive officer of the Dairy Farmers of Ontario, and Gordon Coukell, the chair.

Perhaps we could just mention to our presenters here that yesterday we had a very excellent presentation on the threat of zoonotic diseases and the work being done by the coalition. Deborah Whale was here and gave us quite a thorough indication of the threats and the fact that there is a conference in Kitchener on August 31. I think one of

our members is going to attend for an update on the avian flu outbreak in BC, so we're going to get a report back on that to the committee. We found that presentation yesterday quite compelling.

Mr Gordon Coukell: We'll be specific to the dairy industry and then make some comments later on the national initiative under the Canadian Animal Health Coalition, which is looking at emergency preparedness on the animal disease side of things too. We may cover a few points that Deborah alluded to yesterday, as far as an animal health act here in Ontario. We think that's a short-coming that needs to be addressed too, not only from the emergency preparedness point of view but from the day-to-day business of animal agriculture here.

Mr Bishop will start off with the preparedness plans the Dairy Farmers of Ontario have and then I'll follow with some comments at the national level.

Mr Robert Bishop: It's a pleasure being here this morning. We didn't know we were going to face an emergency measure in trying to get here with the close-down of many of the streets. Anyway, we did make it roughly on time.

I'll just give you a little background of who Dairy Farmers is and what we do. As you can see, and I think you should all have a deck in front of you, even though our title is Dairy Farmers of Ontario, we are the marketing board operating under the Milk Act. We're a not-for-profit organization owned by our dairy farmers—5,282 of them across the province.

In the last 12 months those farms produced 2.5 billion litres of milk. That was worth, at farm gate, \$1.6 billion. That represents about 20% of the Ontario farm gate cash receipts.

To get that milk to market, obviously, we have 63 milk transporters travelling the roads across the province with 275 milk trucks. They're out every day. We deliver to 71 milk or milk products processing plants in that process.

This will give you an example of where our producers are, and you should have this. You can see that there's a very large block north of Guelph in western Ontario, and then one to the far east, but you can see that they are spread all over the province—in the near north and far north of Ontario.

The same goes, then, for our transporters who transport that milk every day. They are spread right across the province and travelling the highways. Our plants are spread across the province as well. So we don't just operate very centrally. We are spread from the very far south to the very far north.

As far as some of the other aspects, our head office, which I essentially run, is in Mississauga, where we have all the divisions you see there: production, marketing, finance, promotion and so on. We do have people who are spread across the province to deal with our producers, field service and transportation allocation roles.

After the ice storm, we did prepare an emergency preparedness plan which we update annually, and we've just done that. Everyone has a binder and we're also

going to be putting it on our Intranet for everyone to access internally. That identifies who the emergency team is, our procedures, where backup information is and where our off-site is if we require it. All that information is contained in that updated binder.

From a farm standpoint, all of our farms must have bulk tank capacity for two days of milk and cooling that milk to four degrees Celsius. Most milk farms do have a backup generator or access to one for operating the milking equipment, feeding, cleaning and cooling. The days of doing all this by hand are long past, so they do require power. Most of them do have backup generation for things like the blackout last summer. Frequent electrical storms do knock out power.

As an organization we have been delegated the authority over raw milk quality on farms, so we inspect those farms on a regular basis. We follow up any problem farms that show up and we inspect for grade A status of those farms.

Milk is picked up essentially every other day, although there are 100 that get everyday pickup; but essentially they store that for 48 hours and it's picked up. It's graded by a grader, who is the driver. He looks at appearance, smell and temperature. They seldom taste the milk these days. They do take a small sample, and those samples are collected and delivered to the government-approved lab service division, which is part of the University of Guelph. There they're tested for inhibitors, which is drug residue, somatic cell for animal condition, bacteria, freezing point and so on. And penalties are assessed to each producer or they're indeed shut off from the market if they're over certain levels.

1150

Again, a sample is taken at the plant of the truckload that is delivered from those individual—because we put a number of producers on a truck and then a sample is taken at the plant to ensure there is no drug residue. Otherwise that's disposed of. Just so they know the composition of who's on the load and what the composition makeup is.

All that milk, when it's picked up at the farm, is recorded by handheld computer, as is the volume when we deliver it to the plant. We know it's so many thousand litres, who made it up and what plant we deliver it to, and that's all downloaded. So the milk volume and the quality of that milk is traceable back to the individual producer and to the individual plant. And of course plants have their own recording and tracing system, batch or time code and so on, so that when we do have incidents—and occasionally there are incidents of product recalls—we can track that product back through them and back to where the milk came from and where it was delivered and so on.

Each of our farms is marked with a GPS marker, and so we can isolate and track back individually by farm or by truck route or by county or by radius from a central point like a nuclear plant. In fact, we do participate in an Emergency Measures Ontario nuclear simulation that they do every couple of years, and we have in certain

areas continued to collect special samples of milk around nuclear plants which have been requested in order to track that there's no residue out on crops and indeed in product.

I'm now going to turn it over to Gordon Coukell, who will talk about emergency management beyond DFO and some of our observations and recommendations.

Mr Coukell: DFO is part of Dairy Farmers of Canada, with representation on the Canadian Animal Health Coalition. The coalition recently, through funding with Agriculture Canada, has conducted three studies. These three projects were: a generic emergency management and communications plan; a plan for West Hawk Lake zone border; and recommendations on policies and protocols for Canadian animal health emergencies.

The four key areas that were identified were, of course, prevention, preparedness, response and recovery. As an industry, certainly, prevention and preparedness are the two we would like to focus on. Hopefully we don't have to respond and recover from a foreign animal disease in our case, which could be very devastating to all of agriculture.

Industry and all levels of government must be integrated and work together, sharing information, and this mustn't be just a one-way street. The five critical gaps identified in what we call the CAHEM study were:

(1) cease movement—this is to stop the movement of cattle or products if an emergency occurs;

(2) mass depopulation—if you've got a serious outbreak of a disease in animals;

(3) carcass disposal—on farm or off farm;

(4) in the resulting timeframe after a problem, what's known as a welfare slaughter for market surplus conditions which may arise—and this can often be more costly than the initial outbreak of the disease itself; and then of course, as you heard previously,

(5) compensation of unrecognized liabilities, and those questions always seem to arise.

In looking more specifically at Ontario, it's the view of Dairy Farmers of Ontario that we do need an Ontario Animal Health Act—we are the only province in Canada without such an act—and we need an Ontario chief veterinarian or provincial veterinarian with authority to make decisions on animal health issues as they arise, with resources to monitor disease also across species on an ongoing basis. We've had the BSE situation of a cow in Alberta about a year and a half ago, which has had a huge impact on both the dairy and beef sectors. Now, more recently, we've had the AI outbreak in the poultry industry. These things do occur, and they need some ongoing monitoring.

The other shortfall, in our view, in Ontario is the need for sufficient funding for the provincial health lab—this is the animal health lab I'm talking about. The lab should be upgraded to what's known as a level 3; it's only at a level 2 now. Current lab practices would not contain a very contagious disease if in fact one was identified. With the current lab being used for teaching, this means students can be in that lab, have the potential to be

exposed to a contagious disease and return back to area farms and actually end up spreading a disease if that in fact happened. That's a possibility that exists today and probably puts our industry at some degree of risk that many people are not aware of.

We certainly need predetermined protocols for sharing information between industry and all levels of government. Suspected outbreaks and locations of those outbreaks must be shared with industry on a confidential basis. It's not good enough to say, "We think we've got a problem in the Niagara Peninsula." We've got 300 or 400 farms in the Niagara Peninsula. We need to be much more specific in order to be able to isolate that problem. That doesn't mean we're going to talk about it in the media tomorrow morning or anything like that, but with 275 milk trucks on the road every day, we need to know whether those trucks have a potential to spread a disease or not and take the steps necessary within the industry to curtail that.

Those, Mr Chairman and members of the committee, are our comments about preparedness. We think it is a joint effort between government and industry. In many cases, we have found that maybe industry's role is not recognized by some government agencies to the extent that some commodities such as dairy are involved in the day-to-day operation and delivery of raw milk, in our case, to the general processing sector—and the ability industry has to play a role in emergency preparedness. Thank you very much.

The Acting Chair: Thank you for the presentation. We have questions.

Mr Zimmer: On your last slide deck, "DFO Observations/Recommendations," the last bullet, "Want to share our database as required with government but not have one large, publicly accessible database;" could you just elaborate on that point a bit?

Mr Coukell: Of course, in our case we have a lot of private information as to quota holdings and the amount of money the producers are being paid each month for their milk and that type of thing, which, in my view, shouldn't be accessible to the general public. Our database, as far as the location of farms and our ability to isolate an area if there's a problem existing—we don't have any problem with having it in such a way that it can be tied into a provincial database in those cases where it needs to be. But all our information that we have couldn't just be turned over for public information.

Mr Zimmer: This is my last question. On the slide deck "Emergency Management," with five critical gaps identified, the fifth one, "compensation of unrecognized liabilities"—I understand that thought, but could you elaborate on what kind of vehicle you might see that would satisfy this concern of compensation for unrecognized liabilities?

Mr Coukell: I think there again, in listening to the previous presenters here, talking about these things partway through an emergency is not the time to do it. If you look in the agricultural and certainly the dairy industry, cease movement of livestock and you've

impacted a person's livelihood in a different way. If you have to dispose of milk, there's really nothing in place now to say that, other than that individual producer, if he has a problem, someone ends up paying for that. As it translates into, say, a foreign animal disease that is quite contagious, you might have 50 or 100 farms involved with not only the problem of disposing of it but where you dispose of that product.

Mr Zimmer: I understand that, but have you got any thoughts on a process or a vehicle or a mechanism to work through that exercise of compensation for unrecognized liabilities?

1200

Mr Coukell: We haven't gone into that. That's part of the discussions at the national level, looking at some kind of a self-insurance package. Some in the poultry industry have gone down that road; the cattle industry has not at this point in time. I think those are the kind of discussions that we need to have with government and other commodities.

Mrs Sandals: If I could look, first of all, at the slide where you're talking about an Ontario chief veterinarian with authority to make decisions on animal health issues, what we're interested in is the emergency legislation and the powers that currently exist in legislation, where there are gaps and what powers would possibly be needed. I'm wondering, on the issue of a provincial vet or Ontario chief veterinarian, however you would like to designate that, what are the powers that you see lacking? You talk about the authority to make decisions. What sort of decisions or powers do you see there?

Mr Coukell: The current situation is that the Canadian Food Inspection Agency does that in Ontario. We've been involved, not with large outbreaks, but we did have a case of TB on a farm. It was fortunate it was only one farm, because a lot of things happened there that convinced us that we weren't prepared for a major outbreak of a foreign animal disease. Part of it is just the lack of a decision-making process. Nobody today, until the federal—I'm not being critical of the federal process but they tend to want to do all the testing and make sure they're absolutely positive that it's positive instead of taking that first preventive step and containing it. Yes, if it costs a few dollars and I dump a tank or two of milk and I find out everything is fine afterwards, it's a lot better than finding out that we've just spread a disease to 50 other farms. So we don't have that ability to react.

Mrs Sandals: No one has the ability to step in sooner, before you get to this "I'm super-duper sure" level that you would get to get to the CFIA. Is that the concern?

Mr Coukell: That's correct, yes.

Mrs Sandals: So that's something that we need to be looking at provincially and clicking in sooner, perhaps.

Mr Coukell: On an ongoing basis of monitoring the total livestock and poultry population to make sure that there isn't something happening out there as well; we don't have that capability either.

Mrs Sandals: OK. If I could go to the previous slide, what you've identified as critical gaps in the Canadian

animal health emergency measures, in my lay language, I would look at "cease movement" as quarantine and "mass depopulation" as slaughter in order to control an outbreak.

Mr Coukell: Correct.

Mrs Sandals: "Carcass disposal" is pretty clear. Are all of those, under current legislation, federal areas of jurisdiction?

Mr Coukell: Yes, they are.

Mrs Sandals: And there is no authority within Ontario to kick in any of those before the federal legislation would kick in.

Mr Coukell: That's correct.

Mrs Sandals: Do you want to see that remain at the federal level?

Mr Coukell: There has to be more coordination, in my mind. I happen to sit on the Canadian Animal Health Coalition. Provincial governments sit there, provincial veterinarians from other provinces. Ontario doesn't participate at that level.

Mrs Sandals: Oh, really? Because we don't have a chief veterinarian, so how can you—

The Acting Chair: We do have a chief veterinarian.

Mrs Sandals: There is a provincial vet, but for some reason they don't have the authority to be at that level.

Mr Coukell: No. There is a person designated as the Ontario chief veterinarian but no act to give him any authority, or very little.

Mrs Sandals: Within the federal legislation, then, do you see gaps? One of the things that keeps coming up is this issue of carcass disposal. Even if you've ordered quarantine and slaughter, what is the mechanism around carcass disposal?

Mr Coukell: This is where the preparedness plans fall down. You can order X number of head disposed of, but then in most areas, what do you do next? That hasn't been worked through. There are no arrangements with municipal waste disposal or large tracts of land where you can bury these animals without threatening the water quality, and those kinds of things. You can't do that halfway through the process, or shouldn't have to do it halfway through the process. Try to get it in place before we get there. Those are the things that need to be talked about and planned, both provincially and nationally.

Mrs Sandals: Is that an issue of preplanning the exact spot, if we were thinking about mass burial of carcasses, for example? Is this predetermining the exact spot, or is it, given the particular circumstances of the location of the outbreak, having the authority to quickly designate the appropriate spot?

Mr Coukell: I think probably the latter, because you don't know where this is going to strike. There's no point in having a spot in Saskatchewan if it's in southwestern Ontario that we need it, but at least to have gone through the thought process and the discussion that, if it happens, these are options and here's the authority to get there quickly, not having endless meetings to try and find out the right people to talk to and come to the conclusions you need to come to.

Mrs Sandals: Thank you very much.

The Acting Chair: MPP Broten to wrap up.

Ms Broten: I'm wondering, with respect to the specific areas of concern that you've raised, whether, in your opinion, there are other jurisdictions we should look to that have developed some best practices that respond directly to the issues that you've raised, whether it's quarantine, depopulation or information sharing. We know there are other jurisdictions that have a chief veterinarian with the powers, but on some of the other more specific issues, I'm wondering if you can point us to jurisdictions that we might look toward.

Mr Coukell: Not really. We looked at a lot of jurisdictions. Our group visited Europe following the BSE and the foot and mouth and actually built some of the studies around the mistakes that were made there. It's an area where, in our mind, there needs to be a lot of discussion and a lot of coordination, to start with. I don't think anybody, to my knowledge, at this point in time has the perfect plan that we can just pick off the shelf somewhere. I think the industry—the CFIA has been involved and is part of the coalition as well. We know the right people to talk to. It's a matter of getting those people all together and getting serious about being prepared for an emergency.

Ms Broten: Having just had the opportunity to go on Agriculture 101, organized by our colleague John Wilkinson, I certainly saw first-hand some of the measures the industry is taking on—biosecurity and other things—on the farm. For all of us, it brought home the issues and challenges being faced by the industry. So thank you very much.

The Acting Chair: The final question. MPP Kormos?

Mr Kormos: Very briefly. I come from down in Niagara where, as you know, we've got dairy farmers as well as cattle producers. They've been whacked big time, cattle producers across Canada, but let's talk about our Ontario ones. Which of your recommendations—because it seems to me that what we're talking about would also equip us to defend ourselves from the embargo put on Canadian cattle, for instance, which many of the cattle producers I speak to speak of as entirely unfair, and maybe it's just because the federal government was gutless around the issue. But which of your recommendations would have protected Canadian cattle producers, in terms of saying, "Look, we've got this security. We have this management issue under control, such that you don't have to be fearful," and we can present a strong, rational argument against the embargo?

Mr Coukell: I think the West Hawk Lake zoning proposal is designed to do that, rather than all of Canada being protected. If that zone was in place and the livestock movements monitored—what's being talking about there—then at least you might have half the country that was still involved with trade. If that cow had been in Alberta, maybe all of eastern Canada could have been separate. That's the idea of the zone. That's probably the only one there that would have had an impact on the trade, because you fall into a different category when

you've got a foreign animal disease. There are other things that kick in and, as we know now, a lot of politics kicks in as well.

The Acting Chair: Thank you very much for the thorough presentation. On behalf of the committee, thank you for making time. It's ironic that as you came here to discuss emergency preparedness, we have a lot of Toronto's streets downtown closed off, because I guess there's been a hostage situation or something. So it just shows the relevance of this committee's deliberations.

Thank you very much. We'll recess until 1 pm.

The committee recessed from 1210 to 1306.

ONTARIO TRUCKING ASSOCIATION

The Acting Chair: The committee will come to order. We have two presentations this afternoon. We have an additional presentation, after the Ontario Trucking Association, from the Public Protection Action Committee, Ian Hood and Steve Poulos. That will follow this deputation by the Ontario Trucking Association.

Here from the Ontario Trucking Association we have Dave Bradley, who is the president; Barrie Montague, the vice-president; and Doug Switzer, manager of government relations. Gentlemen, I think you know the routine. You can take up as much of the time as you want to make a presentation. You have approximately a half-hour. If you want to leave some of that time for questions or comments from members of the committee, feel free to do so. As you know, the mandate of this committee is to review all provincial government statutes in terms of emergency preparedness for the purpose of writing a report and draft legislation to try and meet the emergency management gaps that exist in the province of Ontario. You can begin; Mr Bradley, I guess.

Mr David Bradley: Thank you very much, Mr Chairman and members of the committee. We were delighted to receive the call to appear to provide you with some of our thoughts and commentary. Obviously the province has experienced more than its fair share of crises and emergencies over the last few years in particular, and the trucking industry has either been caught in some of those emergencies or, in addition, has played a significant role in terms of not just keeping the economy moving, but ensuring that medical supplies, equipment etc get through to the people who need them when all else fails.

Clearly a lot of work has gone on in the last couple of years. We've had occasion to speak with Dr Young, for example, on numerous occasions. Boy, I sure wouldn't have wanted his job last year, given all the things he and his folks had to deal with. I think they've done a very credible job under the circumstances. However, we have questions, some things we're not clear about. I'm not saying you would necessarily be able to answer them, but they are things you might be able to pass along to the ministries involved. We also have some observations that we're able to make based on being involved in some of these situations over the last few years.

If you'll bear with me for just a few moments, I'd like to go through them one by one. These aren't necessarily in any priority order, but they are things that seem to crop up continually that cut across—it doesn't matter what kind of emergency it is. Then we'll talk specifically, at the end, to some of the border issues as well.

I guess as an overriding comment, while we have been called upon to assist in different emergency situations—when I say “we,” I mean the industry, carriers, and the association—it often seems to us to be an afterthought. Maybe things have changed, but our experience has been that when a crisis hits, and if food, equipment or supplies need to get through, there seems to be a good system in place for collecting the kind of materials or supplies that are required, but that the thought of, “How do we get those things where they need to be?” can be an afterthought. As a result, it puts pressure, not only on the overall situation, but also on our industry and us, as an association, in terms of being able to respond in sort of efficient, effective and methodical way—“Things need to get somewhere tomorrow. Find us a truck. Find us a carrier”—those kinds of things.

As an overall comment, it's important to keep goods movement in mind, whatever those goods happen to be in a particular situation or whatever is required. And if there is a way to establish some sort of formal communication link or a process whereby we knew what we would be called upon to do in various situations, I think that would be helpful.

There are some other things that are perhaps more practical and that always seem to crop up. One issue would be the matter of suspensions and exemptions from operating regulations. Look at, for example, the ice storm that occurred in the Ottawa Valley area a few years ago, or at the border situation in the weeks immediately following 9/11, where trucks could not move at their normal speeds, either because the weather wasn't permitting and yet they were taking generators to Ottawa, that sort of thing, or because of the day-long backups at the border. I can recall a situation during 9/11—it's become a thing of urban myth—where an enforcement officer was walking along the several-mile-long lineup of trucks and was writing tickets for truck drivers who were stuck in the line for being out of hours of service. There was nowhere for these guys to go, they were inching along in the lineup, and yet they were getting ticketed.

When we would contact the ministry about these sorts of things, we would get a response, and usually the most practical response. But what we've asked for, and what there doesn't appear to be a mechanism for, is the ability in emergency situations to provide temporary exemptions or suspensions of some of those regulations. The most obvious ones are the truck driver hours of service. If something has to get somewhere and it may take longer than what the rules presently allow, that driver and that company shouldn't be put in the position of being in violation of the law. Truck weights and dimensions as well: If you've got a specialty piece of equipment that needs to be moved and there isn't either time or the

mechanism for getting all of the appropriate permits in place, again, that company runs the risk of running afoul of the law and taking on a large liability.

Usually what occurs is that we get sort of a nudge and a wink and they'll go ahead and do that, and the government rightfully is concerned about its own liability of saying, “We're just going to ignore the law.” They can't say that. So I think there needs to be some mechanism in place to try to deal with those sorts of situations. It's complicated somewhat in transportation because trucking is of split jurisdiction: there is provincial regulation and federal regulation, often the same sort of thing. So we need to make our way through that.

Municipalities also have their own set of rules and bylaws: truck bans, weight limitations, those sorts of things. We believe we need to look at some mechanism to supersede those so that we can in emergency situations respond to whatever is required and not be running afoul of the law.

We also know that certainly since 9/11 the municipalities have been compelled to come up with emergency response plans, and we have been involved in, I would say, a very few of those where we've been consulted, and we have more questions than we have comments because we don't know what the essence of those plans is, we don't know what our responsibility is, what would be expected of truckers in some of these cases, and we don't know, therefore, how effective the plans would be.

Liability insurance is another issue. In fact, the very few companies that are still writing trucking insurance now—and since 9/11 those have dwindled rapidly, particularly if you've got any US exposure—have started to write terrorism clauses into insurance. Again, if you're moving essential supplies during the fallout from a terrorist attack, your insurance may be null and void or may be prohibitively costly. That's something as well that we are uncomfortable with.

Route planning: We're not aware of what the emergency evacuation routes would be in any particular communities in Ontario, or whether they exist or not. It's certainly not the same as when you travel in Florida, for example, and you've got the hurricane evacuation routes. We're not aware of anything similar in Ontario.

A major problem for us is the cleanup of crashes or highway incidents. These can tend to drag on interminably, it would seem, at high cost to the economy and to the discomfort and perhaps danger of the motoring public who are caught in these sorts of situations.

Barrie Montague has worked over the last couple of years with the Red Tape Commission in trying to come up with recommendations for resolving some of these problems. There was a report from that committee; we have no idea whether anything from that report has been formally adopted.

One of the big problems, as far as we can see, and we still don't feel it's been addressed, is who's in charge at an accident scene. You've got local police, you've got OPP, you've got Ministry of Transportation, Ministry of the Environment, the fire department and who knows

who else, and there's no clear delineation of the chain of command in these situations. I think that impedes the ability to move some of these things away more quickly.

We found out a couple of years ago—ironically enough, during a period where some truck drivers were protesting outside of the fuel depots across the top of Toronto—how quickly our fuel supplies can dwindle in Ontario. I remember a panic situation in terms of the hospitals not having enough fuel and that sort of thing. In this day and age, when you're watching what's happening in the Middle East and whatnot, this is of grave concern to us. We can't be of much help in keeping the economy or getting supplies to people if we don't have the fuel.

In the United States, the US federal government has a significant pool of fuel that it owns. We're not sure if any sort of contingency exists here in Ontario, where the government has a stockpile of fuel for its own purposes that can be used in these emergency situations; if not, we think that's something that should be looked at.

The border obviously is something that we've been at the front lines of. While there were problems at the border prior to 9/11, certainly they've been accentuated since. There have been all kinds of effort aimed at trying to make our borders not only more secure but more efficient. I must say, however, I think we're losing that battle. I think the momentum has been lost. I think there are things afoot, some of it being regulations emanating out of the United States, some of it being simply the capacity of our infrastructure to deal with some of these problems, and I see the situation now getting potentially worse, as opposed to better.

Some of the things that are being suggested we don't agree with. There's been a lot of discussion about marshalling yards, somewhere to truck the parks. We think that's an unworkable, archaic situation that flies in the face of some of the measures that have been introduced or are in the process of being implemented to speed the movement of trucks. We would agree that, perhaps in an emergency situation, if the US went to code red and those trucks that don't have the appropriate designation or security credentials to cross the border are starting to back up, maybe they need to be temporarily moved to a marshalling yard, but we don't think the vehicles that have undergone the appropriate security checks and have all the designations should be stopped. Indeed, the one thing the Canadian and US governments agree on is that those carriers that have those credentials would continue to move, even in code red.

1320

We are very concerned about the inertia that has arisen at some of our busiest border crossings and our ability to not only move efficiently but move safely through communities. Windsor is perhaps the most glaring example. It was two and a half years ago that the then Premier and Prime Minister agreed to a \$350-million package for a short- and medium-term solution to Windsor. Two and a half years later, we are nowhere near a solution. We believe some leadership is required there.

This is also important because, for example, in Windsor, where the Ambassador Bridge is the world's single largest gateway for trade, it is the only crossing of any size in that city. Heaven forbid, but if a terrorist attack were to take that bridge out, I can't imagine how the Ontario economy would be able to recuperate from that, given that most of our exports cross through that gateway.

We need an alternative. We need to look at, in this day and age, how we respond quickly, more quickly than in the past. We shouldn't denigrate things like the Environmental Assessment Act, but I think we need to look at how we can expedite the situation when it's of utmost importance to the province.

We need to ensure that we have adequate funding for not only the approaches to the borders but for the economic corridors that lead to those border crossings but would also be our major routes for transporting military and humanitarian aid and the like. We're not sure. Again, maybe there are, but we're not sure what the response plans are for the approaches to the border were a terrorist attack to occur and those sorts of things. Again, we think that there needs to be some improved communication.

Those are just observations. We have questions and not all the answers, but we're willing to play whatever role the province calls upon us to play as an industry; we always do. But we believe that we certainly could do a better job if there was a more delineated plan and we knew what our expectations were and that, indeed, in doing so, we were not going to put either ourselves or the province or the public at a greater liability.

Thanks very much.

The Acting Chair: Thank you, Mr Bradley. Questions from the MPPs. We'll start with MPP Sandals.

Mrs Sandals: Thank you very much. You've raised a lot of issues here, and I thank you for drawing those to our attention. It's very helpful to have you enumerate the issues. I'm almost overwhelmed by where we should begin.

We're looking specifically at legislative powers during an emergency, and you've mentioned the whole issue around an emergency override on the normal trucking regulations and the reasons, quite clearly, why one might want to do that. If there were provincial powers to have an emergency override on some of the regulations that you've enumerated, how encumbered would you still be by Canadian regulations? How many of the situations that you've outlined are federal regulation, and where does the provincial regulation—

Mr Bradley: Yes, that is a very complex area, and I'm not a constitutional lawyer so it's difficult to say. But the situation is this: Ontario maintains regulatory oversight over what's called intra-provincial trucking. That's trucking that doesn't cross the provincial border. The federal government has constitutional authority over what's called extra-provincial trucking, those trucks that cross borders. The rules, while they're not perfectly in harmony, have a lot of parallel and compatibility.

Back in the 1950s the federal government of Canada, while it maintained constitutional authority, delegated the administration of the federal trucking rules to the provinces. So while the federal government ultimately has the constitutional authority to set the rules, it's the provinces that enforce them. I think there would probably have to be something in the federal Motor Vehicle Transport Act giving the provinces the authority. I assume you would want to have a joint federal-provincial protocol around how to deal with these things, but I don't think it's insurmountable, and we shouldn't try to make it more complex than it is.

Mrs Sandals: But we keep running into this problem of the overlap of jurisdiction.

You've also talked in various ways about priority goods, given whatever the emergency is. You've talked about access to fuel supplies. Among the emergency powers that have been suggested to us are powers that have to do with the rationing of critical supplies, and I presume one could extend that to the transportation and movement of critical supplies. How would the trucking industry react to emergency powers which designate, as you say, that these generators, food, whatever the good or service is—or goods in your case—in some ways are the ones that have priority access on the highways or priority access to fuel in a time of fuel shortage?

Mr Bradley: I think the trucking industry would respond to that by saying that, given the circumstances, that would be entirely appropriate. The key is developing a plan that's fair, equitable and practicable. Given that, I think in an emergency situation our industry would be more than supportive of the law of the land. But we do agree conceptually with the fact that during an emergency some things may need to move and have priority over other things. That's a fact. It has happened in every emergency we can think of. So I think to codify that and put some protocol around that would be appropriate.

Mrs Sandals: One of the things which you didn't mention that has been raised as a concern by some of the other emergency responders is that one of the forms of emergency you may be looking at is related to hazardous materials, and in many cases it's the movement of hazardous materials. I know, because I happen to have a riding the 401 passes through, and one of the concerns of my local responders is that they don't know what's going by on the 401, yet they're the people who have to respond to the emergency on the 401 and, by definition, they never quite know what it is they're responding to. Do you have any suggestions to make around the communications around what hazardous materials may be involved in a particular emergency situation?

Mr Bradley: Mr Montague here has played a major role in terms of trying to bring common sense to the regulations surrounding the transportation of dangerous goods, so I'll let him respond.

Mr Barrie Montague: The laws with regard to the movement and transportation—it's a federal regulation, a federal act, which Ontario has adopted in one-page mirror legislation. I'm surprised that the other responders

would say what they are saying. The whole purpose of the transportation of dangerous goods regulations is to deal exactly with that issue in terms of the way the vehicle has to display the appropriate placards to explain exactly what is in that vehicle. Similarly, the paperwork that has to accompany the vehicle is very specific in what it has to contain. It also requires that they have what is called an emergency response guide. Actually, we don't have it here but the Americans do it and most trucking companies carry a copy of the emergency response guide, which all emergency responders should have, and I'm sure they do. It actually explains exactly what the risks are with that particular dangerous good related to the United Nations number. It's fairly clear. It tells exactly what actions they should take—the evacuation procedures, the danger from emissions and all of that kind of thing.

1330

So I'm very surprised to hear you say they don't know what's going through. Unless they're suggesting—God forbid—some kind of pre-notification—

Mrs Sandals: No, and I don't think that was the suggestion. It was more, "In the midst of the crisis, are we sure we've got the right information and that we have it fast enough?" I would think that there would be particular concern in the case where the trucker has actually been injured.

Mr Montague: Again, that's the point of having the vehicle properly placarded. You've seen the vehicles. You've seen what those decals are on the outside. That is a very specific decal for a specific hazard. So again, I can't comment any more. I'm just surprised that they would say they don't have adequate information. If they don't, then this is something they should take up, I think, with Transport Canada. They sit on the appropriate committees that deal with these things. If they really have a concern that the current regulations don't provide them with the appropriate support, then I think they should take that up with Transport Canada.

Mrs Sandals: It may simply be a case that when you're dealing with major transportation corridors, you're dealing with a lot of different emergency responders with varying degrees of sophistication, because in a lot of cases you're running through rural areas.

Mr Bradley: That's right, and I think as well—and this is not to play the bogeyman—with some of the problems we're having at the border, with the backup of trucks at the border, we mention in our notes that there has been some attention, clearly, to trying to avoid, let's say, a terrorist attack on a bridge. Particularly where those bridges are privately owned, there has been a lot of interest in terms of protecting the asset. I can't respond one way or another, but I'm just not so sure that the same sort of consideration has gone into the situation if you have an attack or an explosion in the lineup, where you've got a chain reaction. You've got trucks hauling different types of materials. That just compounds the issue.

Mrs Sandals: The interaction.

Mr Bradley: In fact, I can tell you that at one of the busier border crossings one of our member companies, which is a very reputable, safe operator hauling dangerous goods, is in a sense breaking the law in the local municipality by taking the trucks through the city as opposed to having those trucks sitting up in the lineup at the border, because they're deathly afraid of a rear-end collision and the chain reaction that would start. It's a safer situation to be breaking the bylaws and going a different route to the bridge than what's posted in the municipality. They're doing it for all the right reasons, but they obviously feel enormously exposed by this. But again, it comes back to the fact that we need to get that traffic flowing.

In Sarnia recently, there have been some issues, and we're trying to deal with those through speed limits and the like, but these are all Band-Aids until we in this province have the infrastructure that we need to allow trade to continue to move.

Mrs Sandals: Thank you very much. You've been very helpful.

Ms Broten: As we look at the tools necessary for the province to deal with emergencies, one of the things that we've been looking at is what tools have been made available in other jurisdictions. Some of those things include the right to demand or request some assistance from the private sector, the right to ration goods, the right to close your borders, limit transport of, for example, livestock into your province, and to demand information from the private sector that would assist in terms of managing a crisis situation.

I was wondering whether or not you had familiarity with any protocols, as we've been talking about today, if the province did decide to do that, whether we could establish a protocol, whether trucking associations in the provinces that have those types of powers have those similar protocols or whether you have any familiarity with industries across the country?

Mr Bradley: We're such a highly regulated industry, again, so long as things were fair and practical, that I think most of my members would hope Ontario already has some of those powers, if they don't.

I am aware that this might not be right on topic and the other two gentlemen may have something closer, but in the United States, it seems to me, rightly or wrongly, that the municipalities, particularly in the post-9/11 era, have access to much more funding from the federal government—or let's say senior level of government, just to be fair—for ensuring that these sorts of things are in place. In fact, I know with the federal highway trust fund, unless a municipality has an environmental plan, an emergency response plan and those sorts of things, they can't even apply for federal highway aid. So there's a big stick that's being used there.

I can't think of whether we've been banned from hauling anything. You've got the Michigan situation now, where there's a lot of politics being played too. Clearly there are some things that they're going to demand: that those trucks demonstrate they're not haul-

ing radioactive, or if they are that they face severe penalties.

Ms Broten: But certainly members of your trucking association would transport goods and livestock and all various things across provincial borders, and some of the provinces, for example, have the right to warrantless searches, the right to demand information from the private sector.

Mr Bradley: Again, I think when you say the private sector, you'd be hard-pressed to find an industry more regulated than trucking. So a lot of this stuff is already there. The officers can ask for just about anything these days. That's the law and that's been the safety imperative.

I think one of the things you would have to consider in that regard would be more from an international perspective: You'd have to take NAFTA into consideration and all those sorts of things as well. Again, I think the plan has to fit the crisis, and the worst possible events will obviously require clear and strong action by governments to protect their citizens.

Ms Broten: Certainly what we heard from the CFIB and their membership base was not dissimilar to yours. We want business to operate in the province and we are prepared to do what it takes to abide by the rules we need to be able to get our goods back and forth across the provincial borders, but most significantly, international borders.

Mr Bradley: Yes. That's our bread and butter.

Ms Broten: Thank you very much.

The Acting Chair: The last question is from MPP Zimmer.

Mr Zimmer: Does the association have any position on the idea of mandatory recruitment of transportation assets to move fuel, food, people, construction materials etc in the event of a declared crisis, transportation assets obviously being trucks and stuff?

Mr Bradley: To date, I think we've got a rather stellar record of providing those sorts of things free of charge or trying to get the fuel compensated or those sorts of things. Again, it would be dependent upon the situation. Obviously, if we were in a warlike situation it may not be beyond the realm of possibilities that people would be commandeered, that just as you're crossing through northern Ontario and there's a forest fire, you can be deputized there on the roadside and the next thing you know you're fighting a forest fire. So again, our world view is a lot broader than it was before.

I think, though, that there needs to be some care and attention paid to what the emergency is. Our members aren't in the business of providing service for free or they won't be in business for very long. But again, if it were part of a crisis plan and we were consulted with, we knew what our role was and we knew the burden was being shared across the industry as best as possible, those sorts of things, yes, absolutely; I don't think any of that is out of the question.

Mr Zimmer: I guess it would help, then, to have that plan in place before an event rather than after.

1340

Mr Bradley: Absolutely. In every crisis that has occurred in the last three years, at some point or another some government agency or some relief agency has contacted my office, saying, "Help." By that point you're scurrying around or they're calling around. They don't know who to call. They don't even know that OTA exists. So I think it would be much better to have something in place, as best you can.

Our industry is also a very fractured industry and not the most organized industry in the world. There are a lot of players, so I don't want to profess that I can snap my fingers and just make things happen. That speaks to the need for a plan. The more information we have upfront, the better.

I have to say that while there's been a lot of work, we're not aware of the final outcome of a lot of these discussions. We don't know if there are some of the emergency plans that we're calling for. Maybe they exist; we're just not aware of them, which leads us to think that perhaps goods movement once again hasn't been considered.

We were being asked to take supplies into hospitals during the SARS crisis. So our drivers would go into the hospitals and drop stuff off. Then they'd go on a delivery somewhere else and they'd be asked, "Where have you been?" "I've been down at the hospital." "Well, you can't come in here."

There were real problems. Of course, we were all learning as we were going, but we've been through it once. Hopefully, we can address some of these things in the future.

The Acting Chair: Just a couple of questions. As you know, Dr Jim Cairns did an evaluation of the huge, significant time delay with the GO Transit accidents at Union Station to see how they can facilitate the investigation of an accident scene to facilitate the movement of people on GO Transit. Do you think it would be helpful if we asked Dr Cairns to perhaps comment on the possibility of doing the same type of examination of the delays that happen? I've asked for information, for instance, on the seven-hour delay on the 401 earlier in August. I think the report that was issued by Dr Cairns last week demonstrated that they can reduce the time down to two hours, reduce that significant impact on people and also respect the scene of the accident. Would that be helpful?

Mr Bradley: Certainly. But I think someone, perhaps as a precursor to that, whether it's this committee, should take a look at the recommendations coming out of the Red Tape Commission, which spent a couple of years looking at all of these issues with the various stakeholders, and find out what the heck has happened with this. It may need a fresh look.

At the same time, this might be an issue that just requires some leadership, or for leadership to be established. My understanding is that the commission came up with some useful suggestions. Certainly we sat on the committee and had every opportunity to bring our

matters to the table; we just don't know what's happened with it. We suspect not much, because we haven't seen a change. I would say I'd welcome anything that would finally get us to a better situation than what we've got now.

Barrie, do you have something to add?

Mr Montague: During these conversations it became more my understanding, anyway, as a layman on this from the police perspective, that today they have a lot of technology they could use to speed up the investigation at the scene, particularly when there's a death involved, because that's usually when there's a really serious delay. It takes a long time for them to do this, but there is technology available today which enables them to do it a lot quicker.

I don't know whether all the police forces have that technology, if it's very expensive or if it requires training. Is it, again, the classic, "This is a resource problem. I'm the chief of police somewhere and I'm not going to spend the money on this because I'm going to use this technology once in the next 10 years"? I don't know the answer. I'm just posing that as a question.

The Acting Chair: The only thing is, the Cairns report doesn't deal with technology, it deals with protocol, and they've reduced the time with his recommendations. And it's not a resource issue; it's basically a procedural issue.

Mr Bradley: The biggest single issue is that we're not sure anybody is in charge. That's protocol.

The Acting Chair: Yes, and we've heard that before.

So in terms of the Red Tape Commission, we'll have research see what the recommendations were and what happened to them.

Just to let you know, the deliberations of the Red Tape Commission—for instance, the decision-making process—were not subject to freedom of information. I tried to get some of that information as a member of the opposition and it was like Hydro—exempt from freedom of information. It didn't report to the Legislature either, it was a commission that existed somewhere in limbo, so we had difficulty tracking down their decisions and their processes. We'll try to track that down.

The third thing is fuel supply. We'll also ask research to find out whether the province of Ontario does stockpile fuel. That's something I don't know and I've never heard discussed. We'll see if we can get an answer to that.

Thank you so much for taking time and helping this committee in its deliberations.

PUBLIC PROTECTION
ACTION COMMITTEE

GLOBAL WARMING
PREVENTION TECHNOLOGIES INC.

The Acting Chair: The next and final item is the Public Protection Action Committee. Mr Ian Hood and Mr Steve Poulos. You have a half-hour. If you could

make your presentation out of that half-hour, and if you want to leave time for questions or comments from the members of the committee, that would be welcome. As you know, we're mandated to look at the status of Ontario's emergency management statutes, and we're looking for ways of contributing to enhancing Ontario's emergency management protections, and doing that through a report and potential legislation. You can proceed now.

Mr Ian Hood: Thank you, Mike and the committee, for allowing us to come before you to address the issues of security of energy. Before you, you have a very comprehensive document that goes into a lot of specifics that have never been made public. There are a lot of documents in there that certainly show that the nuclear industry is in very serious trouble. With the idea in mind of getting rid of coal-fired generation, it doesn't make a bit of sense because the most important thing is reliability of energy, especially if there is a terrorist attack. There's a lot of information in there associated with coal-fired generation and also the pipeline that they're proposing. TransCanada PipeLines is considering natural gas as a chief source of energy for the province by eliminating coal-fired generation. Taking a look at the nuclear considerations here, we're in very deep trouble, to say the least.

Those documents are self-explanatory, but coming straight to the point, the bottom line is simply this: The amount of information about the terrorist scenarios in this province is very far-reaching. A number have been identified. We don't have the resources or manpower, and it goes on and on from there as far as dealing with the issues. I'm talking about CSIS and a number of others.

One of the most important documents in this particular consideration is a letter from Colin Kenny, the chairperson for the Senate committee on national security and defence. Colin is saying—

Mr Zimmer: Where is it in the package?

Mr Hood: It's right here, sir. He sent me a copy of a—

Mr Zimmer: What page?

Mr Hood: I believe page 9 or 10.

Mr Zimmer: Just give me a second.

Mr Hood: It's right here. I'll get it for you.

Mr Zimmer: Just tell me where it is so I can—

Mr Hood: It should be on—

Mr Zimmer: Isn't the package numbered?

Mr Hood: Unfortunately, the time frame in regard to the issues associated with getting down here was within an hour, so we had to put this together with a group of individuals and people. There it is, right there.

Mr Zimmer: An e-mail.

Mr Hood: Yes, an e-mail to me from Colin. At the very bottom: "As to his doubts that Canada is a target for terrorists, our committee has yet to receive an intelligence briefing that did not warn us that we were a target and sooner or later an attack was coming."

1350

That comes from one of the most credible sources in Canada, and he's respected around the world. The intelli-

gence community has said time and time again that Canada has a very serious problem, and that letter from Colin Kenny is a serious document, to say the least. That went to the Toronto Star, and he sent me a copy.

The bottom line of all this is simply that security of energy is absolutely crucial. To get rid of coal-fired generation doesn't make a bit of sense, Mike, because it's the most secure energy source we've got, without question. If terrorists want to attack that, it would take a tremendous amount of explosives to bring it down. Not only that, it would be only one plant and there are five now working. When you take those plants out and think about a natural gas pipeline, 2,000 miles that can't be protected, and what happened in California last week—

Mr Zimmer: Mr Chair, it seems to me that we're here to investigate or look into what recommendations we should make to respond to an emergency that develops. With all due respect, what the speaker is getting into now are political and philosophical decisions as to what is the better energy source. What we're interested in is what happens at the end of the crisis.

Mr Hood: I can say this to you—

The Acting Chair: Just one second, Mr Hood. Could you just try to focus on the Ontario government's ability to protect assets: being ready to protect these assets in an emergency and are we prepared to do so prudently by existing statute?

Mr Hood: Mike, we don't have the resources, the manpower—and it goes on from there. Again, securing energy is important and the legislation that's necessary to give you the powers to see that this is in place is essential—and I say "essential." To oversee the nuclear industry as far as waste scenarios and all the other considerations is also very important.

Your committee is the front line, one of the most important parts of dealing with the problems in Canada and in Ontario. I can assure you that you need money and you need a great deal of resources. You need more than what's around this table. You need a great number of research people and you've got to get CSIS and all the other people who are involved to co-operate totally—and their budgets are not being met. They don't have the resources. And the security problem here in the province is very serious, to say the least. What you see here is nothing compared to what I will provide for you, including everything from A to Z in regard to cross-border intelligence, the situation at the border, if you want. But you have to have the power to make sure the energy supply is secure. More than anything, if there's a serious attack in this province, based on what could occur here because of all the information, if they attack our energy supply—you know that a short time ago there was a serious arrest in regard to immigration. They went into this man's apartment and found Pickering up on his wall, and he was taking lessons at the island airport. We have been living in sort of, "Well, if it happens, it happens." We've got to go well beyond that.

I know more than anything, Mike, that you and this committee care and want to do something, but you have

to have the information. You have to rationalize basically where the problems lie. The reports you have in front of you show that the reliability factors are important. The nuclear energy commission and others have to come back to you and say, "Look, we have a problem. This is what we have to do." What's necessary is for you to get as much information as possible in regard to issues of national security and the province as far as reliability of energy.

When I got into this other issue about coal-fired generation and so on, it was because of one issue: We have to have secure energy sources. You guys around the table can do more to secure the most valuable asset we have, and that's energy. You've got to have those powers. They've got to come to you and explain what they're doing to secure that. I can tell you that I deal with Jake Epp and the rest of them on an ongoing basis, and they're in a panic state, to say the least. Go to Three Mile Island and take a look at what they've got there compared to what you've got at Pickering, in light of the hundreds and hundreds of terrorists that have been identified—I'll give you the list if you want it.

The Acting Chair: Ian, as you know, we have had various representatives of atomic energy, the nuclear commission and the Ministry of Energy here talking about that very thing. Certainly you brought more attention to that. We need to get that information, and that's why we brought them here to do that.

I wonder if Mr Poulos could talk about Global Warming Prevention Technologies, because we also did have Professor Smit from the University of Guelph talking about the need to look at climate change and how it will impact on emergency preparedness. That's why I was also very interested, given our time situation, in hearing from Steve Poulos about this other aspect that the committee is dealing with.

Mr Steve Poulos: OK. Very briefly, as you know, there are approximately five major categories affecting climate change. Global Warming Prevention Technologies is addressing the major and immediate energy emissions coming from coal-fired plants, as well as waste, as addressed by the trucking committee, and the new technologies to convert waste into energy with a 100% recycling component.

These actual issues were the result of about a decade of planning, and the security issues resulted out of them. GWPT is actively involved in providing security technologies as well.

Perhaps what Ian wants to get to is the way to both prevent and address an actual incursion. If you want to strictly address incursions, then perhaps that's a separate presentation altogether.

The Acting Chair: Questions? MPP Broten?

Ms Broten: Mr Hood, can you tell me who the membership is of the Public Protection Action Committee?

Mr Hood: There are two here and a number of others, but because of issues of nondisclosure, we get into some difficulties, Mike

Ms Broten: So you couldn't provide us with a membership list?

Mr Hood: Well, let me put it to you this way: Some of the people who are involved are from the United States and there are a number here in Canada. But the bottom line is strictly the paper and the security we can provide. I can assure you that we can give you the most sensitive information—FBI, CIA; you name it, you can have it—and I can assure you we can deliver.

Ms Broten: How many members are there?

Mr Hood: Again, I can't get into that.

Ms Broten: You can't tell me how many members there are?

Mr Hood: Well, the problem is that we're dealing with people who have one idea in mind, and that is that even sitting here in front of the TV is a security risk.

Ms Broten: How long have you been the chair?

Mr Hood: Three and a half years.

Ms Broten: Were there other chairs before you?

Mr Hood: No.

Ms Broten: How long has the organization been in existence?

Mr Hood: In various forms it goes back quite a way, but this particular part of it, three and a half years.

Ms Broten: And you've been the chair the entire time?

Mr Hood: That's right.

Ms Broten: What's your background expertise to run an operation like this?

Mr Hood: I communicate with a great number of people who are involved in different considerations and I have several degrees, but I'm not going to get into all that at the moment. I will say this to you clearly: The only thing that counts is the absolute, 100% understanding of what's going on in Ontario and in Canada, and that can be provided.

Ms Broten: But we don't know from whom it's going to be provided, we can't know the number of people involved and you won't share with us your background.

Mr Hood: Well, let me put it to you this way: There are a number of people who could be watching television right now that I have concerns about. I've come here for one reason, and that is to help Mike and others understand the dilemmas. But again, it's only the paper.

Ms Broten: Understood.

Is Global Warming Prevention Technologies Inc really a company that sells scrubbers for coal-fired plants?

Mr Hood: Global Warming, which I'm a part of, is very technically oriented. It is there for one reason; that is, to find solutions. We have the academic coalition for political sciences and urban development and others involved. We have come up with some very, very important solutions to serious dilemmas.

Ms Broten: Is it a public company or a privately held company?

Mr Hood: Privately held.

Ms Broten: And you're the president, Mr Poulos?

Mr Poulos: Yes.

Ms Broten: What's your background?

Mr Poulos: My background is in architecture and industrial design.

Ms Broten: Are you also a shareholder, Mr Hood?

Mr Hood: I am.

Ms Broten: So a closely held private company.

Mr Poulos: Yes. There are eight directors. Presently we are working with CNS consultants, who right now are looking at providing solutions at an RFP level with us to the federal government, which just released a threat—

Mr Hood: Yes, but you can't—

Ms Broten: Have you sold any of these technologies in North America?

Mr Poulos: On the waste technologies, we're into a position of intent with the region of Peel—

Ms Broten: You're cutting in and out on your microphone.

The Acting Chair: Mr Poulos, if you'd just step back. I think you're too close to the microphone.

Mr Poulos: OK. The region of Peel has been researching with us for three years the technology that we are now funding for the region of Peel, which is a \$10-million waste recycling plant.

Ms Broten: But the coal technology, the scrubber technology—

Mr Poulos: That's in its feasibility stage.

The Acting Chair: MPP Zimmer?

Mr Zimmer: Just for the edification of the committee, in this unnumbered collection of documents, one of the documents, dated June 7, 2000: "Dear John:"—is that you?

Mr Hood: What's that?

Mr Zimmer: I don't know. It says here, "Please be advised that the documents ... are to be treated as class 'A' secret."

Mr Hood: If it's there, it's only for your interest. If it's supposed to be secret, it shouldn't be before this committee.

Mr Zimmer: All right, thank you. I have no further questions.

The Acting Chair: Any further questions? I want to thank you both for being here and presenting these very comprehensive documents that the committee can look at. If you want further information, I'm sure Mr Hood will be more than happy to sit down with members of the committee.

The committee stands adjourned until 10 o'clock tomorrow morning.

Mr Hood: Mike, could I say something in closing, just quickly?

The Acting Chair: Yes.

Mr Hood: You had a presentation before you prior to this, and that was the trucking industry. As you know, you've received a lot of communications in regard to border issues, especially the transportation of nuclear waste. I'm dealing with that. I might as well give it to you straight.

The Acting Chair: OK. So we can access that information from you also, then, if we wish.

Mr Hood: All right. The big problem there—and I'll say this very quickly—

The Acting Chair: It's got to be confidential.

Mr Hood: —the reason those trucks are being delayed at the border and the number of trucks that were turned back carrying low levels and high levels of radioactive materials is because of Tom Ridge's people. The border problems—thousands of trucks are going there and they can't inspect them because there are tens of thousands of different items in garbage and they can't hand that bill in.

Mr Bradley knows all about it, and I was surprised that it wasn't being discussed here.

The Acting Chair: OK. We'll follow up on that. Thank you very much for the deputation.

Members of the committee, we'll resume tomorrow at 10 am.

The committee adjourned at 1402.

CONTENTS

Wednesday 25 August 2004

Emergency Management Statutes Review	JP-243
Ontario Paramedic Association	JP-243
Mr Robert Burgess	
Canadian Red Cross, Ontario Zone	JP-250
Mr Gordon Moore	
Mr Steve Armstrong	
Dairy Farmers of Ontario.....	JP-255
Mr Gordon Coukell	
Mr Robert Bishop	
Ontario Trucking Association	JP-259
Mr David Bradley	
Mr Barrie Montague	
Public Protection Action Committee/Global Warming Prevention Technologies Inc.....	JP-264
Mr Ian Hood	
Mr Steve Poulos	

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**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

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**Standing committee on
justice policy**

**Emergency Management
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 26 August 2004

Jeudi 26 août 2004

*The committee met at 1007 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): I bring the standing committee on justice policy to order. We have this morning three deputations, and also this afternoon, if you noticed, we've got a full agenda. We've also succeeded in getting the California office of homeland security to join us by teleconference at 2:30.

By the way, the committee has the subcommittee report, which we'll discuss after, so you'll have a chance to look at it at recess—just before the recess, just to make comments on it. So you're going to have a chance to look at it, because some members have not seen the written subcommittee report.

REGISTERED NURSES ASSOCIATION
OF ONTARIO

The Acting Chair: The first deputation is Doris Grinspun, the executive director of the Registered Nurses Association of Ontario. Ms Grinspun, as you know, the committee is charged with reviewing all Ontario statutes that relate to emergency management, emergency measures, with the purpose of coming up with a report and with draft legislation dealing with some of the recommendations the committee has been entertaining from various groups and associations.

You have about a half-hour, and you can leave some time for questions or comments from members of the panel, if you'd like. You can begin now.

Ms Doris Grinspun: Good morning. My name is Doris Grinspun, and I am the executive director of RNAO, the Registered Nurses Association of Ontario. We are very pleased to participate in the standing committee on justice policy's review of emergency management statutes and Ontario's preparedness to respond to another crisis like SARS.

There is no doubt that emergency preparedness is an utmost priority for Ontarians. Last year, the SARS outbreak underscored the fact that Ontario's health care system lacks the capacity to anticipate and respond to new threats, and has insufficient surge capacity to respond not only to big crises, but even short-term crises.

However, as others have already underscored, shoring up our health care system is more than a matter of

reacting to new threats. Ontarians need and deserve an integrated health system with a clear accountability and decision-making structure, as well as adequate resources to allow health care professionals to respond to health emergencies in a timely and coordinated fashion.

Establishing an appropriate legislative framework is but one step, in our view, to ensuring Ontario is prepared for the future. It is within this context that we would like to provide RNAO's perspective on three key themes: challenges experienced by nurses during SARS; improvements to emergency preparedness since SARS; and legislative issues. Let me start with challenges experienced by nurses during SARS, and we will do that briefly, as we produced a very large report that you have with you, which we submitted a year ago to Justice Campbell, and then recently the big version of it.

SARS was an experience that the nursing profession will never forget. We heard and experienced the chaos of communications during the first phase of SARS, and we heard repeatedly about nurses' concerns not being heeded during the second phase of SARS.

Nurses in all roles consistently shared with us their frustration over staffing shortages. RNAO has been flagging this danger for many years. It is one that cannot be resolved during an emergency situation and that will only exacerbate—in fact, show its ugliest face—during a crisis. Overwhelmingly, nurses stated that we were ill-prepared to tackle SARS.

The over-reliance on part-time, casual and agency nursing was a barrier for staffing and for sustaining staff morale. Needless to say, it was also a barrier for communication. The significance of multiple employment took on a new dimension for nurses when they were justifiably directed to work only for one employer to contain the spread of SARS. Indeed, one of the most striking features of Ontario nurses' current reality—indeed, the reality of registered nurses across this nation—is the high number of nurses who are working part-time or casual.

In recent years, more than half of working nurses have not had full-time employment. This is a most unusual circumstance—and I might say a new one, actually, in Ontario, as it's just a decade old—for any profession, and serves as a stark contrast to other jurisdictions like the United States, where 71.6% of nurses work full-time. Not surprisingly, that's why our nurses continue to be moving in that direction.

The SARS outbreak, however, did not create, nor did it reveal, the current reality of excessive reliance on part-time and casual nursing employment in Ontario. It simply underscored the danger of ill-conceived policy decisions that led to 43.2% of Ontario's registered nurses working part-time or casual, a danger that RNAO, as I said, has been flagging to the government and employers since 1998.

There is no doubt that Ontario has recognized past mistakes. We are pleased that the current government has made this a full-time priority—the issue of moving to 70% full-time employment for RNs. We are even more pleased that they are backing their election promise with concrete actions that will bring about a resolution. Yes, we acknowledge the several announcements that we had on this issue in the last while.

But I need to remind the committee that, until we have at least 70% of registered nurses working full-time in Ontario, we will continue to be at serious risk, not only during crises and emergency situations, but on an ongoing basis for patient safety and quality of care in regular times, in normal times.

Nurses also pointed to major health and safety concerns exacerbated by limited occupational health and infection control resources. During the outbreak, nurses expressed serious concerns regarding access to, and effectiveness of, protective gear, especially, I would say, during the first phase of the outbreak, and mostly because of confusion and not having a totally coordinated approach at the beginning of it.

Similarly, occupational health and safety departments were quickly overwhelmed by the sudden increase in work-related illnesses among staff. The need for counselling, information and ongoing case management grew exponentially. In addition, new assessment and monitoring tools as well as new policies were needed. It was impossible for the occupational health and safety staff to meet this demand, and yet this was a time when staff needed their services the most.

In one organization, for example, there was one occupational health and safety nurse for more than 1,000 staff. Additional resources were sought, but there was no supply of trained personnel available. I know that we are making progress. It is in the recent report released by the minister, and we are pleased about that. We need to see that, though, in action, and we need to see that in place in workplaces as soon as possible.

System-wide, we heard about problems in coordinating decision-making and directives between and within sectors. The result was considerable confusion. As all sectors contended with SARS, other programs, and the patients and residents who rely on these programs, were neglected. I'm not only referring to other programs within the hospital sector; I'm also referring to programs in the public health sector. Nurses described how the restrictions imposed during SARS significantly affected the quality of care they were able to provide. We must prevent this type of occurrence in the future.

Secondly, improvements to emergency preparedness since SARS: In June 2003, the association called for a

full public inquiry into the SARS outbreak. While we stand by our call, we were pleased that Justice Campbell was appointed to head the commission to investigate the introduction and spread of SARS in Ontario. We are confident Justice Campbell will address nurses' concerns regarding the effectiveness and timeliness of the health care system's ability to respond to SARS.

Justice Campbell's interim report identified the many failings of the Ontario health care system to prepare for a health emergency. We expect his upcoming report and his final report will contain important legislative recommendations. I believe there is a report coming out in the fall.

In the aftermath of the SARS outbreak, the RNAO, in collaboration with the Registered Practical Nurses Association of Ontario and with support from the Ministry of Health and Long-Term Care, developed the Voluntarily Immediately Available Nurse nursing registry, known today as VIANurse. VIANurse is an electronic registry, maintained confidentially on the RNAO's Web site, of RNs and RPNs who have indicated their voluntary availability to be deployed from one Ontario facility to another in the event of an emergency—an emergency as designated by the Ministry of Health and Long-Term Care.

This initiative will help nurses respond even more swiftly to an emergency situation, and those who are volunteering for this program demonstrate once again that nurses are willing to do what it takes to help the people of Ontario and keep them safe. Yes, if we need to do it all over again, we will do it all over again. The emergency registry service not only helps patients but also assists nurses who are often required to work exceptionally long hours due to staffing shortages in an emergency. The intent of the registry is to help alleviate some of the burden on nurses at affected health care facilities and, of course, alleviate system pressures. The system is fully operational as we speak.

During SARS, we heard about problems in coordinating decision-making between sectors. For instance, public health was not adequately integrated with hospitals to manage SARS, and there were conflicting directives from the Ministry of Health and public health. Operation Health Protection, introduced by the Ministry of Health and Long-Term Care in June, is evidence of this government's commitment to rebuild and revitalize our beleaguered public health system. Public health has long been the orphan of our health care system. SARS was a wake-up call that we must answer, and we must answer it quickly. Ontarians need and deserve an integrated public health system.

1020

Legislative issues: In your review of legislation and legal lessons learned, we urge you to keep in mind communications needs during health crises. First and foremost, any legislative change must begin by clearly designating one person responsible for decision-making and issuing directives. In health emergencies, in our view, that responsibility should belong fully to Ontario's

chief medical officer of health. I am aware that there are differing opinions, including from Dr Sheela Basrur and Justice Campbell, but we actually back Justice Campbell on this one. We believe that we need one person to be fully in control and that person should be the chief medical officer of health.

The establishment and maintenance of an effective communication network linking government, health providers, professional organizations, unions, higher education institutions and the public remains key to a successful emergency preparedness plan. This channel for communication would ensure timely, efficient and well-coordinated information distribution within all levels of the health care system, from government to point-of-care professionals and vice versa. Communication requirements, including participation from registered nurses, should be enshrined in policies and procedures of health care organizations as well as in legislation or regulation.

Nurses' experience during SARS was, at times, if not often, one of exclusion. As a result, you may be aware that very early on the RNAO set up the SARS nursing advisory committee, SNAC. Later on, that became a reference group to government and today it has been formalized into ENAC, the emergency nursing advisory committee. This committee continues to meet on a monthly basis. In fact, we're now in the process of finalizing, from a nursing perspective, covering all sectors of nursing, both health sectors and education sectors, policies and procedures for nursing. Allison Stuart is aware of this, and this of course will be forwarded to her for her review and, hopefully, integration into the system plan.

In a key recommendation to Justice Campbell's commission to investigate the introduction and spread of SARS in Ontario, RNAO called for the immediate introduction of whistle-blower legislation to ensure nurses and other health care workers can express concerns without fear of reprisals from employers. You cannot legislate respect for a profession—absolutely not—but you can put in regulations that will affect health care organizations and encourage them, ensuring that health care professionals, in good times and especially in emergency times, can speak their minds, obviously with the protection of patient privacy, on system issues when they think the system is failing.

The RNAO first requested whistle-blower protection in 1998. I met personally with Premier Harris at the time. In a document to him, when we discussed the many challenges of nursing, one of the challenges was the issue of speaking up in good times and bad times on protecting the public and nursing care. Health professionals must be afforded the ability and protection to speak out on behalf of patient and public safety. In fact, if we don't do that, if we don't do this type of legislation, we are taking away a very important safety valve of the system. Our experience with SARS crystallized the need for this protection. Some nurses felt compelled to speak out despite the risks to their livelihood in doing so. We cannot know, how-

ever, what crucial information about the outbreak was lost from those nurses and other health care professionals who were afraid to speak out—and I know they were, because I got numerous phone calls both at work and at home. Let me tell you, they were not only from nurses; they were also from other health care professionals, many of whom never spoke up. I also know because many requested that we attend their visits to Justice Campbell with them. That's how afraid they were of speaking up on what they knew.

We urge the committee to keep in mind the need for this protection in its review of legislation and regulations.

Thank you for inviting the RNAO to present to the standing committee on justice policy's review of emergency management statutes. I will be happy to answer any questions you may have.

The Acting Chair: We'll start with Mr Dunlop.

Mr Garfield Dunlop (Simcoe North): I have no question.

The Acting Chair: Mr Kormos.

Mr Peter Kormos (Niagara Centre): Thank you kindly, Chair.

The Acting Chair: The next presenter is at 10:30, so you have about 15 minutes divided between the two caucuses left.

Mr Kormos: Ms Grinspun, thank you very much for coming. What's remarkable, what's so very interesting, is that at these committee hearings—which, mind you, have been difficult because the government wanted to hold them during the summer months when many people are not available—you, on behalf of the RNAO, subject to a correction from another member of the committee, are the first representative of a union or association of workers.

There has been talk—I'm not saying this is the conclusion of the committee—about overriding collective bargaining agreements. There has been talk about including private sector resources in doing an audit of our emergency response preparedness—not that that's wrong, but obviously with the inference one might draw from privatizing emergency response, which I find a very frightening proposition.

I appreciate your being here, because we haven't sent out invitations, that I'm aware of, to the Police Association of Ontario, for instance.

The Acting Chair: We have.

Mr Kormos: We haven't had them here. The Ontario Professional Firefighters' Association—have they been invited, Chair?

The Acting Chair: They've been invited also.

Mr Kormos: Were they able to come in the time frame?

The Acting Chair: They have not responded yet.

Mr Kormos: It's the middle of August. SEIU, the Service Employees International Union, who represent a whole lot of health care workers and ambulance personnel?

The Acting Chair: They've been invited.

Mr Kormos: And what has their response been? Are they available?

The Acting Chair: They're not interested, just unable to attend or whatever.

Mr Kormos: OPSEU?

The Acting Chair: They've been invited.

Mr Kormos: And?

The Acting Chair: No response.

Mr Kormos: CUPE?

The Acting Chair: You can go through the whole list. But remember, we said that members are also more than welcome to invite groups or associations. So far, we have gotten one of the most amazing cross-sections of people and organizations, representing cities like Ottawa and Peterborough—Dr Low, Dr Young, EMS Toronto, the Ontario Paramedic Association, every conceivable ministry. Anyway, they're all invited to come.

Mr Kormos: You see, I'm concerned. It's the middle of August. That's why I'm curious about the reasons they haven't responded positively.

Ms Grinspun: May I ask what the question to me is?

Mr Kormos: This was my expression of gratitude to you. Because it's helpful to have someone like you and your counterparts here.

Ms Grinspun: Let me comment on a couple of things that you mentioned. I can only speak about the last eight years working with government—eight and a half since April 1, 1996, when I became executive director of the RNAO. I am very pleased that I was asked to come, and I made sure that I put this as a top priority. I think the relationship of any government with any of us is a two-way street. I need to tell you that I was not always invited in the past. At least I am invited now, so that's progress. And we made sure that one of us would be here. Thank you for letting me know all of those that you invited, because I will encourage them to attend. We cannot be complaining after being invited and not attending.

1030

On your comment on overriding collective agreements, I have been reading some of the presentations of other individuals, including the one of the OHA. On the issue of bringing people from other provinces or countries, I want to comment on that because it's important, I think, and also on the issue of refusal of work. The OHA said we need to put something in legislation to probably prevent that.

Let me comment on the first only in relationship to nursing, because we were confronted with that. We actually had people who wanted to come from other provinces to help and we felt very awkward about that because we knew of the many nurses who wanted to help but didn't have full-time work; hence, they couldn't help. The right solution is to be well prepared ahead of the emergency. So let's move as fast as we can to the 70% full-time employment for RNs and we will not have the problem, at least in nursing, as much in human resources.

The other point is that you cannot really mandate people to work. Yes, you can put the legislation, all right, but people can call and say, "I am sick"—one way or

another. Very few people in my experience in nursing refuse to work, and I'm aware of those. I would suggest 95% or 98% of the nurses, if not higher than that, were there every day despite the difficulties, putting their lives and their families' lives at risk many times, and patients first. When some refused, they were afraid of the protection. So, again, let's be prepared for how we protect not only our nurses but doctors and others, and we will have fewer and fewer refusals. That will be my answer to some of the comments of some other colleagues who presented to you.

Mr Kormos: Thank you kindly.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Thank you very much. It's very nice to see you today, and on behalf of all of us I want to again say thank you to the nurses of the province, through you, for everything that they have done.

Certainly, we have had a chance before to speak about the issues of SARS, and I want to, in the few moments that I have, ask you directly about the question of directives. When we had the other folks who were able to attend before the committee and talk about health-related issues, we heard a lot of concerns about whether directives were truly directives or whether they were voluntary directives. From the front line and the people you represent, I wonder if you can speak to that issue specifically.

Ms Grinspun: Yes. Actually, let me give you a very concrete example. First of all, there were way too many directives, too frequently, confusing the one who was interpreting the directives. So even if they were directives, different people were interpreting in different ways. There was a very specific issue in terms of the mask testing that we actually discussed even in the committee, because everybody was doing a slightly different thing because they were understanding the directives in a different way. Then we brought the question, "Is this really a directive or is it a guideline?" I think there was some level of confusion.

Ms Broten: On the front lines as a result of the directives.

Ms Grinspun: Yes, on the front lines, and I will say not so much only on the front lines but even in those organizations that were interpreting the directives for the people in the front lines. It also appears, from what we hear, that there was a lack of sufficient input from the front lines to ensure that the directives were actually operational, that people on the ground could follow through with all those directives. While we understand that in a situation of emergency you cannot have extensive consultation, somehow we need to get that voiced, and we have it now, in the nursing case, through the committee. We actually have not only the committee; we have also a subcommittee that deals specifically, every time we ask for consultation, on directives.

Ms Broten: Just one last comment, Chair. I want to speak to the issue raised by Mr Kormos. I would invite you to encourage the groups that we have invited. Obviously, these committee hearings have taken place

during the summer, but we have reached far and wide to invite groups to come before the committee. In many instances, I think some of those groups have had poor experiences with past governments and perhaps feel a bit gun-shy about coming before us or think that we aren't really here to listen.

I can tell you from this side of the table, we want to hear the various views from the front line. We have invited those groups to come. Mr Kormos has had every opportunity to put people on the list. He sits on the subcommittee. As of yesterday, we were continuing to put people on the list. We still will be having some hearings in October and we do encourage people on the front lines to come and talk about the issues. So I think the issue was perhaps blown out of proportion, but any assistance you can provide us, we would very much appreciate.

Ms Grinspun: We will make sure to do that.

The Acting Chair: Mrs Sandals.

Mrs Liz Sandals (Guelph-Wellington): One of the issues that has been raised by a number of people is the sense of directives being confusing, conflicting, a sense of unease about who is in control, and you've highlighted this in your report, as have many others. You've made a very specific recommendation. A lot of people have said, "Tell us who is in charge"; you've actually made a specific recommendation about who should be in charge. I'm wondering if you could give us a little bit of a sense of why you chose the chief medical officer of health. I'm not being argumentative. I would just like to know what your rationale was for that particular choice.

Ms Grinspun: It is imperative in the case of a health emergency that there be a health professional who has expertise, and to me, that person is the chief medical officer of health. I also support very much that that person should be more arm's length, and I know that MPPs—now that will be the case more than it was in the past.

We cannot in an emergency situation politicize in any way or shape what is happening. It costs people's lives. Let me leave it at that.

Mr David Zimmer (Willowdale): I had the benefit last spring to be at an awards ceremony out at North York General Hospital, where one of your nurse members, who was a nurse at North York General Hospital, received a national award. I just wanted to remind members of this committee that it was that nurse, through her own initiative, who put the connecting dots together on the SARS outbreak and brought it to the attention of the medical doctors. I wondered if you might just take a minute and outline the work that that particular nurse did.

Ms Grinspun: Absolutely. You're referring to our colleague in Scarborough Hospital now?

Mr Zimmer: Yes.

Ms Grinspun: Yes, she identified that. Well, it is reported, right? When she came from a weekend, she identified that the family of that individual—that she had been travelling, and she put the dots together and she

alerted. At the same time, though, we have colleagues who also alerted that maybe we had SARS back at the door, and their view is that their concerns were not seriously acted upon.

So that's why I'm saying we cannot rely on the goodwill of people to speak up, or their expertise only. Whether we like it or not, the reality is there are power structures in the system. People know that some actually have lost their work for speaking up, so we need to put within legislation regs that encourage, that send the message that if people are not listened to within their organizations, they can still speak up, they will speak up, and their jobs will be protected.

We had a wide range of experiences during SARS, and although that one is fantastically encouraging in the first outbreak, in the second we had a totally different, serious experience.

1040

The Acting Chair: OK. The very last question, Jim Brownell.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Yes. Just one little question on VIANurse, the program that was set up after SARS. The success—how is that taking off?

Ms Grinspun: That program is very good. In fact, my colleague Irmajean Bajnok is the person who is leading that project. It's fully operational. We already did a simulation and, again, that's something I would recommend strongly for the entire program of emergency preparedness. I bring that from my experience of working during war in another country.

The best way to know—and I said this the other day to Allison Stuart—if we are ready is to actually go through the motions. So VIANurse has simulations twice a year and involves not only the VIA nurses, which is about 400 at this point, and more are coming all the time, but also the organizations that need to enable those nurses to move to another organization.

The Acting Chair: Thank you for being here. I just want to say how some of us have been directly involved in exactly what you've been talking about.

You mentioned the lack of transparency or the fear of reprisal, etc. That shouldn't happen in a time of an emergency. In fact, I had a constituent of mine who was a nurse contact me during the SARS outbreak saying, essentially, that there were things very wrong at a local hospital. She was also upset by the part-time nurses coming in, and they were taking all the risks, etc.

Luckily, I was actually helped by the press. I brought her concerns to a member of the Queen's Park press gallery, and the next day there was a front-page story in one of the local papers. In fact, that reporter was nominated for a national newspaper award.

It shouldn't have to be that way in an emergency and, hopefully, this committee could deal with that so that in the time of an emergency, a nurse or another front-line person shouldn't have to be afraid to come forward with important information in terms of something gone wrong in the system. In this case, they had to do it in a very

indirect way, which doesn't help serve the public interest here. So I hope that somehow we can eliminate that type of distrust or fear in times of emergency, when you have to deliver those services and be very frank and forthright.

Ms Grinspun: Mr Colle, while it is true that much of the success of the health care system during a time of emergency or in normal times relies on the expertise, the good will and the strength of relationships of health care professionals among themselves and the professionals and others in decision-making outside the organizations, like government, we cannot rely on that?

We need to create a system and structures and legislation and regulations, if need be, that will enable nurses and others not to feel afraid of speaking up; hence, the reason we have been asking, since 1998, for whistleblower protection. It exists already in many jurisdictions of the US; there is no reason why we shouldn't have it. Hopefully people don't need to use it, but it will signal to health care organizations that you cannot muzzle up any health care professional.

If you remember, after the story came out we immediately called for a full public inquiry. In fact, we knew and we were warning about this issue too. We had Justice Campbell appointed only after we came to Queen's Park with nurses wearing masks that said, "Muzzled, silenced, ignored." That's how bad it was, that we needed to push. People said to me, "My gosh, now this one is really over the top, bringing nurses who put on masks saying that." It appeared on all the pages of the newspaper, I believe, on June 9 or something like that.

But it shouldn't be that way, right? We need to be prepared as cohesive teams before, but also we need to have signals in regulations that say to nurses, also in normal times, "You can speak up when you think there are system problems."

The same happened not during a so-called emergency in the mid-1990s. We reached about 53% of nurses working part-time/casual, more than half of the nursing workforce, in 1998 and nurses were afraid of speaking up that that was a disaster for patient safety, because they would lose their jobs. And yes, many of them lost their jobs just because of speaking up. That's when we requested that then-Premier Harris please put in whistleblower protection, and we are still waiting.

The Acting Chair: And there's another group waiting here to present. Again, thank you very much for being here and making a very valuable contribution to this committee's deliberations.

CHICKEN FARMERS OF ONTARIO

The Acting Chair: The next presenter is William Bearss, who is the general manager of Chicken Farmers of Ontario. With him are Chris Vanderkooy, director of operations and service delivery, and Maureen Latocki, vice-president of Hill and Knowlton. Please identify yourselves as you address the committee. You've got approximately a half-hour, and if you could perhaps leave some time for questions and comments, it would be appreciated.

Mr William Bearss: Thank you very much, Mr Chairman and honourable members. We are mindful of the time and we note with interest that there's a party of considerable stature following us, so hopefully we wouldn't intercede on his valuable time as well.

My name is William Bearss. I am general manager of Chicken Farmers of Ontario. I'm accompanied today by Chris Vanderkooy, who is director of operations and service delivery for our organization. While we had indicated that a colleague from Hill and Knowlton, which is an agency with whom we've had some ability to work over the last couple of years, will not be joining us, we're quite comfortable in representing our interests as we speak.

Thank you very much for the invitation to be here today. I will make the bulk of the presentation but Chris will certainly offer up some supplemental comments, either through the course of it or during the question-and-answer period, that might assist this committee in its work.

I think by virtue of being invited here today as Chicken Farmers of Ontario, it's reflective of perhaps some of the work we've done in building strong relationships with government agencies and the political realm over the last number of years. More specifically, in the area of agriculture and food we have established, as you might well expect, a pretty strong relationship, given that we operate under a regulated marketing system that is subject to the Farm Products Marketing Act.

As a result of the role of agriculture expanding into the larger public realm, we certainly have expanded that relationship as a result of various incidents into relationships with the Ministry of Health and Long-Term Care, largely emerging, as you well know, as a result of the avian influenza connection last fall in Asia and, closer to home, the BC AI situation that emerged back in February and with which we continue to deal at this moment. As a result of that, obviously the human health emergency preparedness issue has broadened out beyond the level of a direct threat to human health. And as a result of that, we have also established good working relationships with the emergency management office in the Ministry of Community Safety. More specifically, as a result of some interaction with Dr Young and Neil McKerrell from that office, I believe that's in part a reason why we were offered the opportunity to speak here today.

We're quite pleased to offer this standing committee an opportunity to share our experience and expertise in emergency preparedness. I guess in that regard, it's that diversification into non-human health areas that has come to the fore, largely as a result of the avian influenza situation. It's important that we recognize that emergency preparedness does extend beyond those bounds and includes agriculture and a number of other sectors.

1050

We'd like to take a few minutes to tell you about ourselves and some of the things we're doing in the area of emergency preparedness. We do have an information package that includes some supplemental information

about us that we will leave with you that describes some of the work we're doing. You can review that at your leisure on your own time. It also includes some facts and figures about Chicken Farmers of Ontario. We've included contact information as well, so if there are individuals or if the committee itself is interested in following up with us, we're quite prepared to provide whatever feedback we're able.

Chicken Farmers of Ontario is a marketing board that represents the collective interests of about 1,100 chicken farmers in Ontario. We're the ones who produce the Loblaws and A&P chicken, the Swiss Chalet and KFC chicken. The farmers who have chickens that lay eggs are represented by another marketing board called the Ontario Egg Producers. We are two distinct bodies, and the two types of chickens and the nature of the production processes are obviously considerably different, although we do share some pretty common elements with them and other livestock sectors in terms of some of the things we do, both individually and collectively.

Our organization, along with similar boards for eggs, turkey, hatching egg and dairy producing farmers, operates under a regulated marketing system where supplies are managed through production quotas to provide appropriate volumes of product to meet the needs of the marketplace. As I said, we operate under the Ontario Farm Products Marketing Act. Producer interests are represented through a nine-member board of directors, and that body is the one to which myself and Chris and our 30 staff are reportable.

We grow about 30 million chickens every two months, about every eight weeks. The year is broken up into six and a half eight-week cycles. Those 30 million chickens come out of our barns, the barns are cleaned up and repopulated and we go through that cycle six and a half times a year, to the tune of about half a billion dollars in farm gate sales annually. That's strictly on the farm side. In addition to that, of course, the industry infrastructure and downstream stakeholders have a considerable economic impact on the fortunes of Ontario, not only in agriculture but beyond that by virtue of processors, further processors, retailers, and the food and beverage or restaurant industry. So the industry generally has a significant role and economic contribution that it makes to the Ontario scene.

More specifically to the interests of this committee in the area of emergency preparedness, CFO is and has been a lead player, both individually and collectively and in efforts with other stakeholders as well, in emergency preparedness. In that regard, I believe you've had at least two other presentations this week. One was by Deborah Whale, chair of the Poultry Industry Council, and another by Gordon Coukell, chair of Dairy Farmers of Ontario. Those are both groups with which we are very closely aligned and with whom we have very strong mutual interests and key areas of issues to address.

In addition to that, Ms Whale told you about a broadly based industry coalition of about 12 or 13 commodity groups who have been working together as a consortium

to engender public and government support for a variety of areas of concern. I think she identified those in some fairly comprehensive terms in the presentation she left with you. I would only emphasize that there are two or three areas in which we want to reaffirm and endorse that support specifically. Of course, one is the establishment or upgrading of the laboratory facilities to a level 3 capacity. That is absolutely critical to the disease surveillance process, and further exploration of that will certainly serve as testimony to it.

In the period since Ms Whale spoke, though, I think it's important for us to share with you that indeed some reference was made to the cost of establishing from ground zero a level 3 lab. Suffice it to say that in Ontario we would not be looking at that kind of a financial commitment, and indeed the cost of upgrading the existing level 2 lab at Guelph would certainly be far less than some of the numbers that I understand were bandied about, and that while they were, I understand, in the \$50 million to \$60 million range, we're talking about single-digit numbers. So in that regard I think there is some room for being more keenly interested in that initiative.

A second area that we believe is critical to the success of emergency preparedness, certainly in that scene, is to engage and delegate powers to the provincial veterinarian to have the authority to take decisions in emergency situations. That was addressed fairly thoroughly.

The third area is to focus on the development of bringing Ontario up to speed and harmonized with the other nine provinces by having an animal health act. I will come back to that in a minute, because in our discussions with Dr Young and others there may be ways to achieve the objectives of such an act in another fashion.

The final area is to ensure that the funding support exists from government for the development and enhancement of a coordinated and harmonized emergency and crisis management strategy and programs implemented by producer organizations so that you don't have all of these different bodies racing around the country with their own little programs and policies and strategies; to have some harmonization and cohesion, particularly in the areas of GIS, database sharing, biosecurity initiatives, and crisis simulation exercises, so that this notion of a global threat or a more broadly based threat can be addressed in a collective fashion.

While we have engaged in those collective initiatives and encouraged active government support for those that were presented to you on our behalf as well as others by Ms Whale and Mr Coukell, we wanted to share with you some of the things that we've been doing specifically, initiatives that CFO, Chicken Farmers of Ontario, have taken on a more autonomous basis. We think that as a result of having that leadership role and taking those initiatives, we have provided industry and the public with a level of comfort that we have the capacity to respond reasonably effectively to an emergency situation even as we speak. We think that level of preparedness has been achieved with the assistance of government, both financially and through program leadership over the last

number of years. I did want to share a couple of thoughts in that regard.

First of all, about four years or so ago, the Chicken Farmers of Ontario took a major leadership role in implementing a CFIA-approved, HACCP-based, on-farm food safety program. By the end of this year, every chicken farmer in Ontario will be required to provide a full documentation that the provisions of that rather rigorous program have been implemented on their farm, and that includes a 112-point audit checklist that is third-party audited on those farm operations to demonstrate their capacity to fulfill the commitments of that program. In that regard, we were fortunate to participate in the provincial government's healthy futures program, which has assisted us in funding some of the technology associated with rollout of that program and the other implementation costs that allowed us to deliver that to our 1,100 farmers, to the benefit of all Ontarians.

On the government leadership side, CFO was supported by the Ministry of Agriculture and Food, specifically Lou D'Onofrio. I'm sure that's a name that will surface in a number of your presentations from an agriculture perspective as the captain of the team, if you will, in building and implementing emergency management and crisis communication plans.

1100

As many of you know, that was an Ontario government initiative that was triggered by the ice storm back a number of years ago, where emergency preparedness was again demonstrated to be needing some attention. We worked closely with OMAF to develop the plan according to prescribed guidelines. Your committee is probably already familiar with the nature of the program in terms of its aim and its scope and the fact that it encompasses all hazards, that it defines the role of a situation response team and it identifies graduated levels of emergency that would trigger that plan. We'd be quite prepared to share with you more detail during the question-and-answer period. But suffice to say, that model has been adopted and we certainly have taken a leadership role there and believe that's a key element in our demonstrated capacity to be prepared for emergencies.

In our case, that plan would in fact be triggered by, as an example, a poultry disease outbreak. It could be triggered by a food safety threat or an environmental emergency, either weather related or otherwise, or in fact any other apparent situation that would require a heightened level of management intervention to (a) protect humans and (b) avert economic infrastructure disaster.

So those are the kinds of things the plan is designed to achieve. We not only have developed that plan, we've been actively involved in routinely testing it under crisis simulations and, as an example, we have participated in the Bruce nuclear simulation exercise and have learned considerably from our participation there. Somewhat less voluntarily, for some of you who may not be aware—I'm sure Mr Kormos would be—in Niagara some weeks ago, there was a false alarm that prompted us to think that there might be an outbreak of avian influenza that may

indeed have had a human connection. Fortunately, on investigation, it was proved to be a false alarm and not avian influenza, nor were the birds related to the condition—

The Acting Chair: Dr Young apprised us of that.

Mr Bearss: But we involuntarily tested the readiness of our system over that 48-hour period and it gave us some learnings on that as well.

In addition, we are going to be a full participant in a three-day simulation exercise that will take place October 27 to 29, along with industry colleagues, CFIA and the government.

You might ask what lessons we have learned out of all this development of plans and exercises, and I think that would be the key message we want to share with you in that regard, that not only as a result of development and testing of these plans, we have in addition learned some things already and will learn more from the outbreak of avian influenza in BC.

I think three key success factors, among many others, have emerged. The first is the critical importance of early identification and immediate implementation of a plan, to have a plan on the shelf ready to implement and have the antenna up to identify when the situation arises. For us, the most frequent trigger is likely to be a disease outbreak and, as you know, like any disease outbreak, they occur the same in animals as humans. It's identifying that first case, not the 50th case, that allows you to act quickly and effectively.

The second is that the immediate assumption is that the problem has the potential to be a disaster and, no matter how minimal or small it may seem, the initial assessment needs to be that this can explode into an unmanageable situation and, as additional information and ability to assess emerges, then that level of preparedness and readiness can be subsided and reduced as the threat subsides.

Thirdly, and very importantly—and it will emerge in some post-mortem sessions that have already been scheduled for assessing the BC situation—is the importance of timely and accurate communication. I think our last speaker shared some of their frustrations with you as to the degree to which people who are on the ground, face to face, at the grassroots level—I guess we use that in ag terms; I'm not sure what the equivalent is in a hospital scenario. The fact is that people need to know what's going on and they need to know it accurately to dispel rumour, hearsay and speculation about outcomes. That communication system is absolutely critical to success.

As I said, through a one-day post-mortem session on August 31, the Ontario industry will be hosting some people from BC and elsewhere to talk for a day about the learning—

The Acting Chair: We have a committee member who will attend that event in Kitchener.

Mr Bearss: Good. Excellent.

The Acting Chair: MPP Wilkinson from Perth-Middlesex will be there.

Mr Bearss: Good. Then again there is another one in Abbotsford, at which our group will be represented,

along with some others, which will be a similar exercise right in Abbotsford where the disease outbreak took place.

My final comments would be to summarize where CFO supports—while I said earlier that CFO supports the introduction of an Ontario animal health act, if, as a result of its deliberations, this committee were to determine that it would be more effective to integrate the interests or key elements of such an act into an omnibus act, then certainly we could be supportive of that.

But the fears we would have to take that route would be, first of all, the fear of assimilation; that is, the interests of agriculture would be overwhelmed and not really be reflected in the success of that act as a result of not being given sufficient attention.

Secondly, it would be that as a result of the integration, with a lot of emphasis on human health threats, non-human threats wouldn't be treated with the same level of urgency and priority that a specific act might do. So there would certainly need to be provision for that in any kind of an omnibus act.

Third, I think we very much would endorse, as a key element of that act, this three-party team that would include the emergency management coordinator, and in this case obviously Dr Young, in a team environment with the medical officer of health and the chief provincial veterinarian, such that the interests of all would be integrated and embraced in any emergency situation where they would be involved.

Finally, I think Ms Whale recited 10 key priorities, which are certainly ones we would endorse. Again, she positioned them, I believe, in the context of an animal health act but, frankly, if an omnibus act achieved those ends, they would certainly be supportable. It isn't the vehicle, it's the journey and the destination that are critical to us. We would want to ensure that they would be embodied in such an act and, finally, that the act have the kind of teeth—we always refer to teeth in legislation; I guess I don't have to tell you folks that what gives legislation teeth is typically dollars—that there be the financial support behind an act to ensure it does achieve the objectives it has and be there to serve the objectives.

With those remarks, I thank you for the opportunity to participate in this public policy process. It's a first for us and we're quite delighted to be a part of it. We would invite you, through the contacts in that information package, to feel free to be in touch with us. As I say, there is a bit of information about the quality of our products. We did a bit of promo there, but I think more importantly for this committee, there are a couple of pieces there that identify how we are addressing emergency preparedness. In addition, our annual report gives you some sense of who our organization is and what we do. So with those thoughts, Mr Chairman, thank you.

1110

The Acting Chair: We have time for a couple of quick questions.

Mr Kormos: Very quickly, the obvious questions: (1) Do we in the province of Ontario have the resources

to adequately respond to a significant outbreak of avian flu and (2) do we have the resources to respond to the outbreak of yet a new infectious disease among poultry?

Mr Bearss: The jury is still out. Our first reaction from our perspective is, we have a lot higher level of comfort today than we had six months ago and, more importantly, five years ago. In our testing of the capacity of our organization to address and be a key player in the identification and delivery of emergency initiatives, we are comfortable that we're very close to capability.

However, what you need to understand is that the emergency crisis communication plans and the work that our organizations will do in the context of your question is that we provide the information. We're the ones that will identify where farms are, we're the ones that will identify the potential sources of disease. But in terms of delivering actual initiatives, we are a partner with government on that. It will be others who will fund the costs of disposal, remediation work, post-event cleanup and/or remuneration and the costs associated with that.

Mr Chris Vanderkooy: Mr Chairman, if I may briefly, I think we're the 10 things on Deborah Whale's list, short of us being able to say without a doubt we're ready. Our industry has a huge capacity to respond. We would be fully reliant on people like Dr Young. The lab needs to be upgraded; there's no doubt in our minds about that. Like Bill said, whether we get an animal health act or whether the authorities go through Dr Young, that is what we need for me to be able to say to you, the next time you ask that question, "Yes."

Mrs Sandals: I think you probably told me where to look to get the answer I want. If we are charged with looking at reviewing the legislation, what legislative fixes we need, then we need to look at what Ms Whale had already said around 10 suggestions. We're charged with the legislative fix, and you've already identified there where the legislative holes are.

Mr Bearss: That is correct, yes.

The Acting Chair: Thank you very much. We did get quite a primer in animal health 101 from Deborah Whale, so we are somewhat cognizant of a very critical area that's been ignored. So we are very pleased that you came and supported a lot of those same things that Deborah Whale presented to us.

Mr Bearss: And on that point, Mr Chairman, I thank you again for the opportunity. I think that perhaps in fairness to the government and the people on this committee and others who have worked very hard over the last number of years to raise the level of preparedness, we wanted to be sure that positive message was also shared. With all due respect to Ms Whale, it was a very highly critical position that her paper takes and it highlights a significant number of areas where there are shortcomings. Our approach is more to decide that those are areas where we need to work together to improve, as opposed to simply pointing at the flaws.

The Acting Chair: Thank you. As you said, what's important is the destination, not the vehicle.

Mr Bearss: Exactly.

The Acting Chair: Thank you for being here. I guess with the low-carb fad, you guys are doing pretty good these days.

Mr Bearss: Yes.

The Acting Chair: And Krispy Kreme is down.

DAVID COLLENETTE

The Acting Chair: The next presenter is the Honourable David Collette, Privy Councillor; distinguished fellow, Glendon College, York University; former Minister of National Defence, former Minister of Transport, and former member of provincial Parliament for Don Valley East.

Hon David Collette: Not provincial Parliament.

The Acting Chair: Excuse me.

Mr Kormos: The difference is substantial.

The Acting Chair: It's the same riding now, you see. It's hard to remember who's in charge in the ridings now. Anyway, thank you very much, Mr Collette, for being here. We very much appreciate you making time in your schedule to help this committee in its deliberations. You can begin. You've got about 15 minutes.

Hon Mr Collette: Well, thank you, Mr Chairman. In my haste to be here this morning, I broke my glasses. So I may stumble, but you have the written text. Your eyes may be better than mine.

I welcome the opportunity to speak to you on a very serious issue facing government today; that is, how to respond effectively and in a timely fashion to emergency situations. You've heard from a number of witnesses about the need to have a strong statutory foundation to deal with the unforeseen, and I'd like, in the next few minutes, to give you the benefit of my experience in that regard.

As Minister of National Defence from 1993 to 1996, I oversaw the federal government's response to the Saguenay floods, and as Minister of Transport from 1997 to 2003, it fell to me and my colleagues on September 11, 2001 to deal with the closing of American airspace and the coordination of some 33,000 people who were abruptly landed at Canadian airports. As vice-chairman of the cabinet committee on public safety, I was subsequently involved in the government-wide response to the terrorist attacks, and I was the sponsor of three bills to deal with the problem. By virtue of this responsibility, I was also a member of the special cabinet committees dealing with SARS and BSE.

The federal government response in the case of natural disasters such as the Saguenay floods in 1996, the Manitoba floods and the ice storm, both in 1997, and the request in 1999 to assist with a severe snowstorm in Toronto was straightforward from a statutory and operational point of view. The Canadian Forces, through the National Defence Act, is the operational instrument, and the Disaster Financial Assistance Arrangements Act is the financial instrument of response by the federal government to natural disasters.

Usually, military assistance to provincial governments is routine, and ongoing liaison mechanisms in Ottawa

and the provinces are used for command and control. However, in situations where provincial authorities are unable to maintain order, the National Defence Act authorizes a provincial government, through the Attorney General, to request, in writing, assistance from the chief of defence staff.

The CDS has a legal obligation to respond as he sees fit and in a timely manner after consultation with the Minister of National Defence. This is commonly known as aid to the civil power and was used on 110 occasions before the Second World War and on four occasions since, the most notable of which were the FLQ crisis in 1970 and the standoff at Oka in 1990. Use of the military in these examples, where the CDS or his subordinates report directly to the provincial Attorney General, has an interesting origin, which I could explain later if you wish.

At the National Defence headquarters in Ottawa, there is a 24/7 operations centre with backup power generation which monitors all overseas military operations. This centre easily switches to domestic emergency situations such as disasters and aid to the civil power.

Financial assistance under the DFAA is usually committed by the federal government during or after a natural disaster and is paid later. It's not uncommon for the two levels of government to haggle for years over bills and payments. In fact, I don't think that the bills have been settled from the ice storm between Québec and the federal government.

The terrorist attacks of 2001, SARS and the power blackout last year did not fall under the category of natural disasters. Therefore, they had to be handled within the context of emergency provisions of existing federal and provincial statutes. Your committee's mandate follows the assertion that more specific ministerial powers are required to deal with emergencies. I'd like to share my experience with executive orders during the terrorist attacks and then make some general observations on machinery-of-government issues required in times of emergency.

When the first plane hit the World Trade Center on September 11, 2001, I was winding up a speech to 2,000 airport executives from around the world at a conference in Montreal. I immediately sensed the disaster had all the earmarks of a terrorist attack and decided to be driven back to Ottawa, instead of flying to Toronto. Once in the car, I was on the phone to my deputy in Ottawa, who informed me of the order by US transportation secretary Norman Minetta for all flights to land at the nearest airport and for American airspace to be closed to all incoming flights. This precipitated a chain of events that Canada had to deal with, including whether we follow the same procedure in Canadian airspace and how to handle the problem of 500 flights en route to North America over the Atlantic Ocean, airspace in the eastern half controlled by the UK and in the western half by Canada.

It should be noted that Transport Canada, like DND, has a 24/7 operations centre with power backup to respond to any transportation emergency within Canada,

within Canadian-controlled airspace and within the 200-mile nautical limit on Canadian coasts and the Great Lakes.

1120

Using powers under the Aeronautics Act, my deputy and I agreed that I would authorize a number of measures, including: the grounding of all flights by any aircraft which had not yet taken off; permission for all flights in the air to proceed to their final destination, unlike the American action; an assessment by NAV Canada, in conjunction with its British counterpart, of the geographical position, fuel load and ability to return to Europe of all flights in Atlantic airspace; orders to those flights that could turn back to do so; direction to those who could not return to Europe to land at designated airports in Atlantic Canada, rather than landing them at Montreal and Toronto where the potential security risk was higher, and I should say that we had already started to receive intelligence reports that terrorists possibly were on board other planes over the Atlantic; and finally, measures for the safety and security of the planes and their passengers once they had landed. Time was of the essence. Every minute and a half, we had aircraft entering Canadian airspace over which Canada had authority.

Such is the culture and discipline of worldwide aviation and respect for Canada that no airline captain, no airport manager, no foreign government and no officials within the federal government or its agencies argued with my ministerial orders. Did we have the unfettered statutory authority to act? We believed we did, and those affected obviously felt the same way. Were the fundamental rights of passengers on board those planes when they landed compromised by our refusal to allow them to exit for many hours until we had the appropriate customs and security officials in place? We believed they were not, although some critics disagree. There are some who would debate the precise ministerial authority used, and subsequent amendments to the Aeronautics Act deal with these concerns.

However, there was one simple truth that was self-evident: There had been four hijacked aircraft, thousands had been killed and injured and the integrity of world aviation security had been compromised. We had little time to worry about the finer points of the law or fundamental rights. There was a catastrophe and we had to act as best we could. There was no time to seek approval from the Prime Minister, cabinet or the Privy Council Office. Indeed, one of the embarrassments we had was the fact that the Prime Minister appeared to be the only member of cabinet in Ottawa that morning. A legal decision of cabinet where four people attended in person or by teleconference was impossible for many hours. As I mentioned, I took those key decisions en route to Ottawa on Highway 417. There was no time to consult, but consultation was unnecessary because we believed we had the statutory powers to issue emergency orders.

Soon after, it became clear that there were wide gaps in ministerial authority required to deal with an emergency such as terrorist attacks in many key departments.

It's interesting to note that all of the orders I issued on 9/11 did not have to be confirmed by cabinet or require legislative oversight. I believe this to be fundamentally wrong, and the debate in Parliament on the anti-terrorist bill, ultimately Bill C-17, focused on the need for GIC approval and examination by Parliament.

The Prime Minister set up a committee of cabinet to recommend legislative and regulatory changes. Line ministries such as Foreign Affairs, Defence, Transport, Customs, Immigration, Health, Justice, Solicitor General and Natural Resources constituted the committee membership. A number of special pieces of legislation flowed from the committee, and one of the bills which I sponsored has endured three iterations and is still not law, three years after the events of 9/11. I find this unacceptable.

One of the more controversial changes which, I believe, is germane to the work of this committee is the need to provide new powers so that the minister responsible can issue interim orders in situations where immediate action is required. In our case at the federal level, in two statutes, the Aeronautics Act and the Canadian Environmental Protection Act, existing authority for ministers was extended. With the exception of these two acts, interim order provisions in Bill C-17, which has yet to be passed, follow a similar pattern. That is:

The minister may make an interim order on a matter that would otherwise be required to be made in a regulation or otherwise by Governor in Council.

An interim order may be made if the minister believes that immediate action is required to deal with a significant risk, direct or indirect, to human life, health, safety, security or the environment, depending on statute.

An interim order must be published in the Canada Gazette within 23 days.

An interim order ceases to have effect after 14 days, unless it has been variously confirmed by the Governor in Council, repealed or has lapsed, or been replaced by an identical regulation. Even if approved by the GIC, the maximum time an order may be in effect is one year.

A copy of each interim order must be tabled in each House of Parliament within 15 days after it has been made or tabled with the clerks if the Houses are not sitting.

A person who contravenes an interim order that has not yet been published in the Canada Gazette cannot be convicted of an offence unless the person has been notified of the order, or unless reasonable steps have been taken to inform those likely to be affected by it.

It's important that an interim order should only be put into effect if, time permitting, it could be implemented as a regulation. That is, the parent act must have the authority, granted by Parliament or the Legislature, to make a regulation out of the interim order. This is the reason Bill C-17 called for GIC approval within 14 days, tabling within 15 days, publication within 23 days and conversion to regulation within one year. In other words, the minister issuing the order must seek quick approval from cabinet, be required to quickly submit to legislative

scrutiny and therefore provide for public debate. In this way, the people are assured there is no abuse of authority by the executive because of the emergency.

I'd like to conclude by making a couple of observations. First, the government must be able to keep operating, whatever the emergency. That goes, I guess, without saying. All departments must have operational centres, no matter how small, with backup electrical power. There was significant criticism during last year's power blackout that the Prime Minister's office issued a handwritten press release using candlelight, when DND and Transport Canada had operations centres fully functioning with their own generators and government departments were operating with power on the Quebec side of the nation's capital. On 9/11, a line department, Transport Canada, effectively coordinated the response across the federal government for many hours as the systems and procedures at the centre were lacking or did not exist. Since 2001, the federal government has gone a long way to improve its ability to deal with an emergency. But on 9/11, we were lucky that we had an ops centre operating around the clock. That was the focus for government operations.

Second, government should think through carefully how it manages emergencies. In order to deal with terrorist threats, as you know, the US has reorganized the government by creating the Department of Homeland Security. I noticed that you're going to hear from someone from the California office this afternoon. That person reports to Governor Tom Ridge, one member of the US cabinet.

As I stated earlier, Canada initially created a public safety committee of cabinet, leaving operational responsibility with line ministers. The present federal government has partially reorganized the security file by creating a Minister for Public Safety, but some line departments such as Transport Canada retain their previous authority. I question whether government reorganization rather than better coordination is the best solution.

I would recommend that the Ontario government not reorganize its security functions by creating a special department, if that is under consideration. In all such cases, the reorganization results in a larger and more unwieldy entity, where bureaucratic infighting and delay occur and where all the pressure is put on one minister and his or her officials. This is what happened in the case of Mr Ridge, and I know all of his senior people there; we worked with them for years. Certainly, this is the case right now in Ottawa, where there's a massive reorganization going on.

A cabinet committee chaired by a senior minister would be, in my view, the most appropriate, and that minister, not an appointed official, should be the face of the government to the public in an emergency. I believe the public wants to see those elected make and explain difficult decisions. That is public accountability.

Thank you. You may have more precise questions.

The Acting Chair: Thank you very much, Mr Collenette. The first question is from MPP Broten.

Ms Broten: Thank you very much. I want to pick up on the issue that you raised in the last statement with respect to the face of an elected official. Throughout these hearings, we've heard differing views on that. Some representatives have suggested that it should not be an elected official but should be someone of a commissioner status, whether in health or safety. I wonder if you could expand a little bit more with respect to the view of why it should be someone who is elected, as opposed to a commissioner such as Dr Young, who would be a public face during the course of an emergency.

Hon Mr Collenette: Yes, I know it's obvious that Dr Young had been the public face of the Ontario government during a number of problems—SARS, the blackout, and there may have been others. I suppose I'm biased, even though I'm no longer an elected politician. I feel that the buck stops with the politicians, the people at the top. I think that people want to be reassured by those who are elected. That's why Mr Bush made his public statement after he initially left Washington because a nuclear emergency was declared. But once he landed at a US air force base, he made a public statement.

That's why we urged the Prime Minister, notwithstanding the fact that most of the cabinet wasn't in town—I said to him, "You've got to get out there and say something, because people want to hear you. They don't want a deputy minister. They don't want the head of the RCMP or the chief of the defence staff."

Similarly, I think there was criticism initially last year that the Premier was not involved with statements in the blackout. Certainly, I noticed at the beginning of the SARS issue that it was Dr Young and Dr Basrur, I believe, city of Toronto, who were making the statements. They're fine public servants. I have no criticism of them or of what they've done, but it was only after the fact that the health minister at the time, Mr Clement, started to become the public face. I think that was much more reassuring for the general public. So I think it's very important that you can have all of the officials, the best officials—and I had terrific officials at Transport; my deputy and associate deputy were outstanding, and all of the people there. But the people who actually made the decisions on 9/11—it was me, and therefore I was the one who had to go out and explain it after the fact, after the Prime Minister had made an initial statement.

1130

Ms Broten: Just picking up on that from your presentation, the explanation after the fact, it appears that in many respects you didn't have to explain it after the fact to cabinet or the House of Commons. We had an opportunity to speak to Quebec yesterday, which has restructured their legislation. That was something they pointed out as being imperative, to be called to account for your decisions before your own cabinet, initially, and in fact before the Legislative Assembly at some point, and at some point fairly near to the occurrence, not months later.

Hon Mr Collenette: In our case, I still can't believe that I was never asked to be fully accountable at cabinet.

I may have made a couple of statements. The regulations that I issued, which affected thousands of people, and the basic rights of many Canadian citizens who were on those planes, were never challenged. With hindsight, and as I've said in my statement, I think that is fundamentally wrong. We did it, and we did it properly. If we had screwed up—pardon my language—then I think it would have been a different situation. We would have really been roasted.

It just showed how the federal government hadn't really thought through the kind of response that you have in this new type of emergency, unlike the examples I gave earlier, where the military is involved, it's pretty much set and they have a good command and control system.

Ms Broten: Thank you. I'm sure many of my colleagues have questions, so I'll pass it on.

The Acting Chair: OK. Mr Zimmer?

Mr Zimmer: On page 2 of your submission, third paragraph: "Financial assistance ... committed by the federal government during or after a ... disaster and is paid later. It is not uncommon for the two levels of government to haggle for years over bills and payments." We've heard a lot on this issue from the various stakeholders—the transportation industry, agricultural, health care providers, hospitals—that they react in an emergency in good faith. They're trying to deal with the emergency. Post-emergency, they're the meat in the sandwich—how they're going to get compensated or how the expenses are going to get sorted out.

Have you got any thoughts on what we might put in the legislation to alleviate or take the sting out of this sort of who's-going-to-pay-later argument, for years between levels of government and these citizen stakeholders, who are often the meat in the sandwich?

Hon Mr Collenette: Mr Zimmer, it's very difficult to answer the question. It's highly subjective. I know during SARS the hospitals around town were incurring expenses around the clock and they claimed they didn't have the money. I remember discussions at the federal level. There was a requirement for cash, but there was a feeling around the table that we couldn't commit funds without some idea of where they were going to end up. We couldn't issue a blank cheque. But really, if you think about it, if those hospitals had worried about whether or not they could meet their budgets, we probably wouldn't have been able to deal with that crisis, which many in Ottawa, unfortunately, felt was a local Toronto crisis. But actually it was a national crisis and it affected our GDP last year. It affected everything across the country: tourism, the airline industry, the transportation industry, the hospitality industry and all manner of other industries.

I don't know how to answer the question except to say that maybe your committee and other committees, a joint committee of the federal and provincial governments, should look into this so that we don't have the situation—the ice storm, as I understand it. I may be a little out of date. I've been out of cabinet since December, but

I understand there are still bills that were presented by the Quebec government that have yet to be agreed to by Ottawa.

From Ottawa's point of view there is always the feeling, "Well, the province may be trying to put one over on us," sneak something through that didn't really occur, much in the way that if a tree comes down on your fence in your backyard, you say, "Oh, Jeez, wouldn't it be good to get the insurance company to pay for the rest of the fence because I was needing it to be replaced anyway." I shouldn't accuse people of ill faith, but there is always a feeling that somehow you need absolute justification of the expenditures before you pay them. You have to be responsible and make sure that you don't just write blank cheques.

Mr Zimmer: Our sense from some of the witnesses was that there was a hesitancy to respond or to take necessary steps in a crisis pending some understanding of who is going to pay what at the end of the day. There was a concern that that impeded a prompt response to the crisis. Any thoughts on what sort of mechanism might be contemplated in the legislation so that those kinds of questions can get answered very quickly, or faster than they have been in past crises?

Hon Mr Collenette: I think you have to have the flexibility so that the government can really be pretty open on how much it commits and for what expenditures. I think on SARS there was a claim by the Ontario government of close to \$1 billion in additional expenditures. There was a feeling in Ottawa around the cabinet table that this was not an accurate figure and there was a lot of haggling back and forth. I have to say that the ministers from Toronto felt that that figure was pretty accurate, but there was reluctance. A lot of it I think had to do with perhaps the working relationship between the governments of that time, the fact that the Ontario government was close to an election. There was a bit of skepticism, which was frustrating for those of us who were ministers from Toronto. I forget how it was resolved but I don't believe the Ontario government was compensated to the extent that it felt it should have been.

There was a big debate in Ottawa as to whether or not SARS constituted a legitimate disaster under the DFAA. The conclusion was by some that it wasn't. Those of us from Toronto said, "Sure, it is. This is a disaster but it's not an act of God in the sense of a storm or a flood."

Mr Zimmer: Just to bring a practical matter home, we heard, for instance, from some in the construction industry that in a crisis they're often reluctant to release equipment and workers into an emergency situation because in the past, at the end of the day, they don't know whom to look to for payment. As you say in your submission, this thing drags on for years and the citizen is often the meat in the sandwich.

Mrs Sandals: I'd like to go back to the question of who is in charge, because we've heard a consistent plea from witnesses that we need to sort out who is in charge, that there needs to be some clear direction as to the people on the ground about who is actually managing the emergency.

First off, a question and then I'd like to draw a distinction. Presumably during 9/11, during the first few minutes, as you say, there were airplanes in the air and somebody had to decide who they were going to land. Presumably as the crisis unfolded, other ministries that had different issues around security and other movement across borders, that sort of thing, would have had other valid concerns. As you got a little bit further away from the initial crisis, how did you manage who was in charge, because now you have more ministries that have an involvement?

Hon Mr Collenette: Ultimately, by later in the day, the Prime Minister's office and the PCO were fully in charge. But for the first number of hours everyone really looked to Transport Canada because, number one, we control access to those communities where there was not staff to process all those people. We had to fly people in. Even though we had grounded everything, I had to give a number of exemptions. I was under a hell of a lot of pressure from people to be exempt for all manner of spurious reasons. We used some of our own government aircraft to get ministers back to Ottawa and to get officials on the ground. Once those officials were on the ground—customs, the RCMP because there were not enough police, other intelligence people—then they could start processing

1140

My deputy, by that time, was liaising with individual deputies, so she was coordinating the effort, although she didn't really have the normal authority to do that. It just fell to us; it had to do with aviation. But it was also that the borders were closed. It was a brief closure, but it was very much a slowdown. Then the other ministries that dealt with border control got involved, such as customs and the police, and then you dealt with the provincial government people, who certainly play a big part in the operation of public safety at the borders.

The first thing we had to react to was the fact that at, I think, 9:36—I forget the precise time—Mr Minetta issued the order and one of the officials from the FAA contacted his counterpart at Transport Canada and said, "This has been done. You'd better get it up the line." Our deputy was informed right away, and as soon as she was informed, she talked to our chief legal officer and other officials—by that time I was in the car—and said, "Our recommendation is that we do the same, but you have to issue the order." I said, "Does it have to be a written order?" I think she skated around that and said, "Well, you can't do a written order at this moment."

Mrs Sandals: Don't make me answer that question. You don't want the answer.

Hon Mr Collenette: "We'll worry about that when you get back to Ottawa." It took a couple of hours to get back to Ottawa. So we made all those decisions, and once we made the decisions, she went to her chief aviation security person, who then called NAV Canada and issued a verbal order—it was all backed up in writing later in the day.

I don't think most people understand the magnitude of what was done. There were 500 flights in the air. These

were basically all wide-bodied intercontinental jets with a minimum of 200 people on board. So there were about 100,000 people over the ocean. Within a matter of minutes, NAV Canada was able to contact the British Civil Aviation Authority and, when the planes were in our space, the planes directly, basically ascertain whether they had the fuel load to go back or had to land. A lot of it depended on the age of the equipment, the fuel efficiency of the plane and how loaded the plane was with freight and passengers. But that had to be done within minutes, when you had a plane going into your airspace.

The way it was done was quite miraculous. If you see the North Atlantic, you'd see all these dots turning back and the other ones diverting off their flight path. All of that was done by our issuing the orders down the line. The other departments really got involved once the planes were down. We control everything to do with the airports, but then people want to get off planes. But when people get off planes, that's somebody else's responsibility: customs, immigration, security. There weren't enough people in Gander. There are 8,000 people in Gander, and we landed 4,000 to 5,000 people there within two hours, half the population. So people were kept on board for hours and hours. I forget the longest time. It might have even been 24 hours, which was pretty rough on those people. The other departments had to scramble. Everybody started to get involved, and gradually, by the end of the day, control went to the Privy Council Office.

Mrs Sandals: It would perhaps, then, be fair to say that in the initial crisis you had to take control and, as things proceeded, although there wasn't necessarily some sort of legislative scheme about how you shared authority, you naturally worked out what was necessary—a certain amount of flexibility in the circumstance. What I'd like to—

Hon Mr Collenette: I would just say that one of the problems we found out was that the federal government really didn't have the command and control centre to deal with something like this at the central level. You had line departments like defence and transport, and in disasters it worked well with National Defence. Then you had what we used to call the office of emergency preparedness—it then become OCPEP and now it's called something else under Anne McClellan—which I guess is akin to what Dr Young does here. But they didn't seem to have the mandate to deal with something like 9/11. There was nobody else around, so you can't worry about who is in charge. You just have to say—

Mrs Sandals: You do it.

Hon Mr Collenette: We just did it.

Mrs Sandals: If I could go back quickly to the other issue of, should the politician be in charge or should the non-politician be in charge? We've heard very strongly from some of the front-line responders that they would feel more comfortable with a non-politician in charge—the chief medical officer of health, the commissioner of emergency management, as the case may be. you've put forward the other case, that the public wants to see the

face of a politician. Is there a distinction here between communications with the general public and technical directives to front-line responders in the perception of who should be in charge? Would you like to comment on that? We're getting quite conflicting views as to who should be in charge.

Hon Mr Collenette: In ongoing management, obviously you have public officials, whether they're in a separate place, like where Dr Young's people are, or within line departments. You can't have the politician—I did not make all those decisions throughout the day, once the key decisions were made, but there are decisions that are political in nature. No public servant really has the authority or would want to take the authority to close the airspace over a country like Canada. We are the world's third-biggest aeronautical player in terms of controlling the north Atlantic with the Brits, including all the overflights of Canada by US and other airlines going to the Soviet Union and the Far East. We are a huge player. No public servant wants to, or should, take that decision, because of the disruption and the cost. A politician has to take it. Under the statute, the Aeronautics Act, that was the ministerial power.

My comment at the end was more in terms of the public face: Who speaks, who actually tells you what's going on? It's fine to have technical briefings, but I think the public wants to know the policy reasons. You can't leave politicians out of the loop. Politicians can't have a free ride when times are tough.

The Acting Chair: MPP Arthurs and then MPP Kormos.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): Mr Collenette, if you don't mind, I'm going to quote one sentence from your submission. Just prior to doing that, I was impressed by it, because I'm optimistic as we go through our process, and if it results in modification to legislation or new legislation, or even in the absence of that, then it draws attention to emergency preparedness and emergency planning, and then our processes can do much of what you have identified in this one sentence:

"Such is the culture and discipline of worldwide aviation and respect for Canada, that no airline captain, no airport manager, no foreign government and no officials within the federal government or its agencies argued with my ministerial orders."

To me, that says a lot. It says a lot about the preparedness and planning that aviation has to do, about what Canada does in that context and about the respect within the federal government's agencies for the aviation business as such. I'm optimistic that at the end of the day we can create a culture and a discipline in emergency planning that I don't think exists in Ontario at this point. I'm optimistic that Emergency Measures Ontario can play a very strong lead role in that. I say that because we have this dual responsibility for emergency planning—provincial and municipal. I don't see any great integration of that occurring. I don't see the provincial face on the municipal emergency planning, preparation and implementation.

I'm wondering if you would be able to comment further on that culture of discipline you experienced in that instance and how that impacted on your ability and your officials' ability to actually put in play what had to happen on 9/11 from Transport Canada and the government of Canada.

1150

Hon Mr Collenette: I think it's a bit of a unique situation. Canada, along with the United States, through the FAA and through the British Civil Aviation Authority, are the world leaders in aviation regulation and standards. We not only are a leader in terms of air traffic control systems, but also we have the world's third largest aircraft manufacturer, Bombardier, and we certify the planes that have to fly worldwide. So our standards are immensely high and are respected around the world.

The FAA and Transport Canada work together on a day-to-day basis, on a seamless basis. In the weeks and months after, we had to revise all of our security regulations within two weeks; usually it takes two years to do one set of regulations, but we did it in concert with the FAA. We didn't always agree with them, and sometimes they let us do things the way we wanted to do it and they agreed, and we called it equivalency. The two organizations work so well together that if Transport Canada says something—issues an order, for example, about a Bombardier plane or whatever—then it's respected around the world. The same with the US and the same with Britain.

Anybody who's a captain of a plane knows who's in charge. They're in charge of the plane, but they're not in charge of the airspace. They have to follow rules, they have to follow orders.

In the case of disasters, usually the military has never been questioned. We're lucky. We have the Transport Canada examples on 9/11 and world aviation standards, but also the Canadian Armed Forces is highly respected and no one really questions their command and control systems in terms of a disaster. The RCMP, similarly, has a very high reputation. So these organizations take years to develop that kind of trust. I'm sure there are similar examples at the provincial level here in Ontario.

Mr Arthurs: Mr Chairman, it gives me a sense that some of our work has to be establishing discipline within the emergency measures operations of the province, the decision-making that has to go on, the authority to act in a fashion. It'll take an extended period of time. It has to be reinforced such that we can actually be able to respond to a disaster situation such that we will have full co-operation without the interjurisdictional debate, which can occur after the fact, if it needs to occur. But there'll be no debate during that process. My sense from your comments is that's what happened federally, certainly during 9/11 and, I expect, during other situations that are referenced in your brief as well.

Mr Kormos: You talk about, by illustration, Gander airport landing 4,000 people, having to move immigration and customs officers, security personnel. How much of the response to September 11 in Canada was done on the fly?

Hon Mr Collenette: It was all done on the fly. I think that's the essence of my report and one of the concerns we had, and that's why the Prime Minister set up the committee of cabinet to deal with all the other issues we had and demands on the system.

Mr Kormos: See, I find that peculiar. I appreciate some of it has to be done on the fly, because you can't anticipate every possible occurrence. I grew up in the 1950s. There are communities in this province that still have air raid sirens. I grew up at a time when we were developing incredibly complex disaster response plans over the fear of nuclear war.

Hon Mr Collenette: We're the same age. I remember that.

Mr Kormos: There you go. It seems to me that if this was happening at that point in the 1950s and well into the 1960s, notwithstanding the plans might have gotten dusty and tattered and yellowed sitting on the shelf, was there no consideration of Gander, which is, again, a small airport, but very critical; it's an important airport, its location. Was there no remnant of decade- or two-decade- or three-decade-old planning that was capable of being utilized or that was put into effect to help make your job easier, and that of other people in your position?

Hon Mr Collenette: We had to decide within a matter of one or two minutes what to do with those planes. When you have—ultimately, it was 229 aircraft; I think about 10 were from the west coast—Atlanta, Vancouver—but the other 219 were in the air. Where are they going to go? We had intelligence reports coming at us—and I'm still not convinced that there weren't others on board that got away—that there could be terrorists on board those planes. So are we going to let those planes come to Montreal or Toronto, into the heartland of North America? If we had said, "OK. Come to Toronto. We'll land them all in Toronto," and one of those planes had crashed into the CN Tower or the TD Centre or any of the big buildings—that was something that went through our minds. You have to understand that I hadn't even seen the planes go into the World Trade Centre, because I was in the car. But I could hear the reports.

So the question is, could we take the chance? To answer your question, we just had to get the planes down, and fast. It didn't matter where, as long as they had the technical capability. Gander has a 10,000-foot runway because it's an old military base. So we got them down. Then, you're right, we had to deal with the problems.

I have to tell you that the provincial governments, in particular Newfoundland and Nova Scotia, were absolutely outstanding. They never questioned us. They co-operated with us. They went beyond what they would normally be expected to do, and they made commitments. They were absolutely phenomenal.

Mr Kormos: I don't think anybody has any quarrel with the decisions that were made. I take note of the sentence, not on page 3 but on page 4, where you say, "We had little time to worry about the finer points of the law or fundamental rights." I suppose you could have rewritten that 20 more times and perhaps not gotten it

quite right, because I'm not suggesting, and I don't think you want to suggest, that you were oblivious to fundamental rights. But you say something there that, when we had the OPP commissioner here, when we had the RCMP, when we had Metro police, they very much wanted to say, but I don't think they felt politically capable of saying it, because that's the real world.

Hon Mr Collenette: I'm not in politics now, so I can be free with my thoughts.

Mr Kormos: I know. The other interesting thing is, I read your references to National Defence, the utilization of the army and the two situations: "domestic emergency situations such as natural disasters or aid to the civil power." How does the mayor of Toronto get the army to come in and drive snowplows? How does it fit into this?

The Acting Chair: Don't go there. Let's not go there.

Hon Mr Collenette: I'll tell you what happened.

Mr Kormos: Please. I want to know. How does it fit into this model? I want to talk to you about this model of how we enlist the assistance of the army or especially the reserves. How does the mayor of Toronto get the army to come in and drive snowplows?

Hon Mr Collenette: I'll be very frank, now that I'm out of politics. Mr Lastman called me, as the regional minister for the Toronto area, in addition to being with Transport Canada. He knew I was in defence before. He said, "David, we need the army in here." I was in Ottawa at the time. I didn't realize how bad it was or appreciate how bad it was.

Mr Kormos: What was your response?

Hon Mr Collenette: I just said, "Mel, there's a procedure you've got to follow. First of all, it has to go through National Defence. But before you get to National Defence, you have to get the Attorney General of Ontario to make the request." I think it was Mr Runciman at the time who agreed that the emergency was of sufficient nature that he should pass on the request to the chief of defence staff. A lot of people questioned that. I have to tell you that, sitting in a Liberal caucus where many, many people come from other regions of Canada which are used to winter, it was tough politically.

Mr Kormos: Like Barrie.

Hon Mr Collenette: Exactly. In fact, one of them came up to me a week or so later, because all the snow melted and we had flooding, and said, "Does Mel want the navy?"

The point is that the mayor of a town, the mayor of a city, in a disaster, has the right to call upon the province to call upon the chief of defence staff. Take, for example, Peterborough a few weeks ago, when you had the floods. It's quite possible that the mayor could have said to the Attorney General, "We need the armed forces in here to deal with this." The Attorney General then would have called the CDS and the CDS was legally obliged to respond.

This goes back to something, just as a bit of history—I think it was around 1855, before Canada was formed as a country. The united Canadas had a Militia Act, and each area had its own militia. When the Fathers of Confeder-

ation were putting together the British North America Act, they realized they didn't want to have provincial militias. The provinces agreed, as a trade-off, not to have provincial militias but that they would get automatic call on the national army, unlike in the US, where you do have, in effect, state militias—they're called the National Guard—which are under the authority, I believe, of the state Governor, and the federal government can federalize them at a certain period of time.

1200

So it's kind of unique to Canada. That's why, in the case of Mr Lastman, he could ask the Attorney General, but the Attorney General really, at the time, was the one who had to make the judgment as to whether or not he felt the situation was that bad that it required the army's assistance.

Mr Kormos: Thank you—and, Chair, we'll talk about this later in terms of material legislative research might get for us—because I'm reading your comments and it talks about, "The CDS has a legal obligation to respond as he sees fit ... after consultation with the Minister of National Defence." Surely—and this is the chief of defence staff—the first response was, "Is this guy nuts?" or words similar.

Hon Mr Collenette: I have no comment. I would not want to anticipate thoughts of other people.

Mr Kormos: Fair enough.

Ms Broten showed me a Senate report. Now, mind you, it was the Senate, un-elected people, who had written a report on security, on emergency management that dismissed—it's true; if I'm wrong, you're going to say so, Ms Broten—dismissed our army as being an effective partner in emergency management because they're not trained to do the job, as I recall the report.

That is contradicted by comments made by, for instance, a person here on behalf of the Ontario Association of Chiefs of Police who's also a Toronto police officer. He was also a reservist. We are in the process of trying to get somebody from the reserve to come here.

You seem to be suggesting that our army is quite capable of assisting provinces and municipalities when they're in conditions of disaster.

Hon Mr Collenette: Absolutely. But the key point is—take the ice storm, for example. The chief of defence staff of the army didn't run the relief effort. It was run by the Attorney General in Quebec and the Attorney General in Ontario. They were in charge. In other words, the provinces actually called the shots. They would go to the military and say, "Can you do this? Will you do this? Will you do that?"

So the command and control then comes down through the CDS. Actually, it's the deputy chief of defence staff who does operational matters. But the actual priorities as to where the army would go and what it would do are determined by the province under the National Defence Act; it's not determined by the military itself. The military then becomes an agent, as in the case of Toronto with the snowstorm that you talked about. The military followed the directives of the province, to

whom I then said, "Well, follow what the city wants to do."

So the Canadian Armed Forces are incredibly professional and, despite all the cuts of the past number of years, are still outstanding and can do this work. We've seen it with the floods in the two provinces I've mentioned and the ice storm. With Oka, that was a different kind of disturbance.

Mr Kormos: My understanding is that the ratio of reserve to regular army in Canada is a contradiction of what it is in many other similar countries in that, if we were to apply those other models, our reserve numbers are way, way below theirs. Some of us are of the view that a stronger reserve would constitute a stronger on-the-ground, in-that-region resource available for disaster relief. What do you say to that?

Hon Mr Collenette: I completely agree, and that was something I really pushed when I was Minister of Defence, but I had a lot of resistance from the regs who were getting cut with the deficit measures. So you had tensions there. Mr Eggleton, who followed me, ultimately had some success in increasing the number of reserves. But I think the reserves should probably be double the regular force, precisely for the reasons you state, and there's a lot of other reasons that we could give to have those people available to work.

But, you know, the military has been cut beyond recognition. Hopefully, the new government is going to restore enough money so that it can discharge all of its responsibilities.

Mr Kormos: Are we to assume that you're suggesting that expanding the reserves would be money well spent?

Hon Mr Collenette: No question.

The Acting Chair: Our time is up.

Mr Kormos: Did I have as much time as the Liberals?

The Acting Chair: I think you had more.

Mr Kormos: I don't think so. I was counting the questions they had.

The Acting Chair: Always asking for more.

Mr Kormos: Yes.

The Acting Chair: Anyway, thank you very much for an absolutely fascinating insight into the workings of government through historic emergencies. I think your relaying of these experiences to this committee has been extremely helpful. I hope your information and your place in these historical events are not lost. This committee appreciates that kind of input, and that's why I think your being here today really helps us in terms of trying to find out how to manage these emergencies and the real decision-making processes. So it's been invaluable for you to be here as a former Minister of Defence through those critical periods. On behalf of the committee, I would like to thank you for making time to be here today, Mr Collenette.

Hon Mr Collenette: Thank you very much, Mr Chairman. Could I just state that it would be useful if the committee looks at a copy of a documentary done by the CBC News with Peter Mansbridge on behind the scenes on 9/11. It's been broadcast a few times but not every-

body has seen it. You'll see how things unfolded from a decision-making point of view and I think it would be helpful.

The Acting Chair: Possibly we can get a videotape copy of that, if possible, Mr Clerk. Thank you again, Mr Collette.

SUBCOMMITTEE REPORT

The Acting Chair: The committee now has to deal with the subcommittee report, which I hope you've had time to look at. I need someone to move its adoption and then we'll have discussion.

Mrs Sandals: If I move it, do you need me here? I've got another meeting.

The Acting Chair: No, you can leave.

Mrs Sandals: OK, I move it. Can I record my vote before I leave?

The Acting Chair: No. Anyway, you have moved its adoption. Debate?

Mr Kormos: The clerk gave me a copy of this this morning and I'm satisfied that it accurately reflects what the subcommittee had contemplated, but I just want to raise some red flags, or flags of any colour, with you at this point.

Once again, we heard from the Registered Nurses Association of Ontario. They made reference to the Campbell report on SARS, which they conclude or believe is going to contain recommendations around legislation with respect to that aspect of response to disaster.

In subcommittee and in committee, we have discussed on numerous occasions, for instance, the 1981 McMurtry report white paper, which seems to conclude that the common law powers are preferable to statutory powers. I'm sure other members of the committee have been as interested as I am in finding out whether or not now Mr Justice McMurtry still holds those views.

The committee hearings have been held, obviously, during the month of August with relatively short notice; perhaps no more and no less so than other committee hearings. This is a difficult month to get people out here. I'm going to repeat my concern—and I'm not faulting anybody. For Pete's sake, don't get all excited there. I'm not faulting anybody, but I'm really concerned. We heard from RNAO today but, for instance, we haven't heard from ONA, we haven't heard from the Police Association of Ontario, we haven't heard from the Ontario Professional Fire Fighters Association, we haven't heard from OPSEU, we haven't heard from CUPE, we haven't heard from SEIU, the Service Employees International Union, which has a lot of people working in the health sector.

It seems to me, especially when the committee has heard discussion around overriding collective bargaining agreements—and I'm not saying that's a position the committee has taken, but certainly that has been part of the discussion. Especially in view of the fact that the committee has been talking about what I call privatization

of emergency response services by incorporating the private sector resources into the broader audit of emergency response resources in the province, it seems to me that it's critical that we hear from these people.

1210

Now, if at the end of the day these people, or any one of them, say, "We have no interest whatsoever in appearing in front of your committee," well, I suppose for me then it's too bad, so sad. But my suspicion is that it's problems around scheduling. Again, I understand there are going to be efforts to have Mr Justice McMurtry appear before the committee. I think it's pretty important that we hear from somebody, based on the conclusions that were drawn 23 years ago about the common law powers versus statutory powers. We're going to hear from Dr Young again this afternoon and that's a good thing.

But I'm worried about this committee putting the proverbial cart before the horse. We're talking about considering directions on the preparation of the committee's draft report, draft legislation, September 7 and 8 and October 4, but then saying that the committee is still going to meet and hear from submitters after the House resumes on October 12. That is just a peculiar sort of thing.

My position is that maybe we ought to wait and hear what Mr Justice Campbell has to say about SARS with his legislative recommendations. We were surprised. We got bushwhacked, if you will, by the Ministry of the Attorney General, which revealed that they had draft legislation. This committee has been sitting for three weeks, and all of a sudden we see the legislation that had been prepared at the request—

Mr Zimmer: Just a second. On a point of order, Mr Chair: I take exception to describing the Attorney General as having bushwhacked this committee with the legislation. We sat through Mr John Twohig's testimony on that point. That legislation was prepared as an exercise by the civil service in anticipation—

Mr Kormos: Is that a point of order, Mr Zimmer? Probably not.

Mr Zimmer: It's a point of order when you refer to the Attorney General as having bushwhacked this committee.

The Acting Chair: Withdraw the term "bushwhacked."

Mr Kormos: No. Thank you.

Mr Zimmer: Are you withdrawing that?

Mr Kormos: No. The Chair has no power to do anything with me here. Please, you should know that.

So here it is. We discover, weeks after the committee starts its process, that legislation exists, legislation prepared at the request of the Ministry of Community Safety. It seems to me that if we have Dr Young here, the Ministry of Community Safety is a critical player in this process. So I don't know what you want to call it, Mr Zimmer, but when ministry officials play their cards that close to their chest, after this committee embarks on its pursuit of recommendations, legislation—

Mr Zimmer: Mr Twohig made it quite clear that that legislation had not been sent to the cabinet, nor sent to the ministry. It was an exercise by the civil service.

Mr Kormos: And Mr Zimmer is correct: an exercise by the civil service—

Mr Zimmer: Thank you.

Mr Kormos: Think nothing of it, Mr Zimmer—an exercise by the civil service on the direction of the Ministry of Community Safety. So clearly, you've got the Ministry of Community Safety contemplating legislative amendments, a legislative solution to what they perceive as their problems, you have the Ministry of the Attorney General collaborating with them in secret, and you've got other ministries, as we've been told, developing protocols and doing an analysis of their capacity—this was evidence before this committee—without having reached their conclusions yet. So why is this committee in such a hurry to short-circuit the work being done by Judge Campbell? Why is this committee in such a hurry to short-circuit the work being done by any number of ministries that are developing protocols and developing a review and analysis of legislation with, one presumes, recommendations, just as the bureaucrats in the Ministry of the Attorney General did, the civil servants in the Ministry of the Attorney General, in response to the Ministry of Community Safety?

So all I'm saying to this committee—the goal isn't to upset anybody. That's a secondary impact. I suppose it's fine in and of itself. But my goal isn't to upset anybody. All I'm saying is that we seem to be in an agenda that is causing us to cut off our nose to spite our face.

I dearly want to find out the reason, for instance, that SEIU, OPSEU, CUPE and the Police Association of Ontario are not appearing, in view of the fact that the Chair tells us they have in fact been invited. I know that Mr Dunlop had expressed early on an interest in having OPFFA here, amongst others. I just want to make that clear. It seems to me those are the sort of people we should be hearing from.

We have to have the debate, I say to you, on the record about whether or not it's going to be a set of recommendations, a report, or whether it's going to be legislation. That isn't a subject matter, as seems to be suggested, "for the purpose of considering directions on the preparation of ... draft report/draft legislation." It seems to me that considering whether it's going to be a report or legislation or both is a matter for an on-the-record debate. I leave it at that.

The Acting Chair: OK. Ms Broten.

Ms Broten: Certainly there are many things to respond to that Mr Kormos raised in his lengthy statement, but I want to start with the issue with respect to witnesses before the committee. The issue of whether witnesses have been called, as Mr Kormos would certainly know, was a matter dealt with at the subcommittee. All the members of the subcommittee had an opportunity to raise a number of individuals and organizations that should be called before the committee. Many, many organizations were suggested by myself, by Mr Dunlop, and, Mr

Kormos, you certainly had the opportunity to suggest organizations that could be called before the committee and we would have sought to accommodate that.

What I would propose we do to resolve this issue with respect to the witnesses is that we request that the clerk's office provide us with a reporting as to the status of the witnesses that have been requested to attend, because Mr Kormos raises a legitimate issue. Mr Justice McMurtry has been put on the list, OPSEU has been put on the list, the professional firefighters' association and many organizations have been put on the list, and we're uncertain as to what their response has been. Are they unavailable or do they not want to attend? So I would make the request that we have that from the clerk's office.

The second issue with respect to witnesses is, according to our first subcommittee report, the clerk of the committee was to compile and provide to the subcommittee a list of witnesses who requested to appear before the committee. It is important for this committee to know who has requested to come before us, to determine whether some organizations have been missed. For example, perhaps some of those organizations have requested to come. I don't believe that's the case, but I don't have that report to verify.

Dealing with the subcommittee report that we're currently debating, given all of this legitimate concern with respect to an inclusive process, which is certainly the perspective that I think all members of the committee want to have, I would propose the schedule of witnesses for October 13 be dealt with again by the entirety of the subcommittee so we can make some determinations and include those names that we think are crucial at that time. So that is with respect to the issue as to the witnesses.

With respect to the issue of drafting a report and meeting on September 7, September 8 and October 4, I certainly know Mr Kormos is well aware of the fact that, due to the peculiarity of the process, we are unable to have witnesses called during those periods of time. We are mandated by the parameters of this committee to make a determination and produce legislation and/or a report, or neither or both, I suspect, to be tabled on November 1. That's the deadline we're currently working toward.

I believed it was the consent and agreement of the entire subcommittee during our meeting yesterday that September 7, September 8 and October 4 would be used for an opportunity to have some discussion amongst members of the committee about what information we continue to need. Certainly we talked about having legal counsel's constitutional experts come and assist the committee in terms of, "If we proposed X proposition in a statute, what would your view be, Mr or Ms Expert?" Those were the types of discussions we hoped to have during those dates. It certainly was the consensus among everyone that that was needed and was important information.

So it is within that context that I think agreement was reached to have closed-session meetings on September 7, September 8 and October 4, to simply have an oppor-

tunity for the members of the committee to start a dialogue and put forward that material.

1220

The last issue I want to respond to is the criticism Mr Kormos has raised with respect to the Attorney General and the testimony of those representatives. Certainly, in the initial schedules of this committee the request was made that MAG be one of our initial deputants. Again, it is the month of August, and due to many scheduling difficulties, those deputants came later in the piece. It is critical and crucial, I think, to be accurate with the evidence that was brought before the committee. The testimony of the MAG representatives was clear that they had drafted a sunsetted piece of legislation and that it was very different in a number of respects, and they certainly indicated that on the record, from the process of this committee. I think that if we want to examine that further, it is imperative to turn to their testimony and the Hansard transcripts of that hearing.

The Acting Chair: OK. By the way, just to be clear again, the committee has said from day one that we will invite anyone recommended. Just to be on the record again, Mr Kormos mentioned a number of unions and organizations. If we've missed some of them or there's been confusion on one of them, let's invite them all again—the ones mentioned by Mr Kormos—so that we try to get them to appear before us.

As you know, in some cases there's been a scheduling problem. But we've had overwhelming participation so far, I think, given the legislation—the quality of deputations. I don't even know whether in the last legislation that was passed by Runciman there was any kind of public hearings. I don't recall any whatsoever.

Anyway, I think we're trying to do our best, given the time constraints. As I told the committee from the beginning, we are not the masters of the schedule. It's been put forward by the Legislature and agreed to by the whips, so we are trying to do our best. As I said, there are other reports. The Walker report on SARS has already come out. It's available to the committee. There's going to be the Campbell report, which has been promised at the end of August. There's nothing to stop committee members from getting that written report. So there are going to be all kinds of reports. But I think we have to try to focus on our timelines as given by the Legislature, and we'll do our best to do that. I think the underlying objective of this committee is to try to do the best it can, given the timelines. Again, if any other member has suggestions—we're going to try to have some more experts and organizations appear on the 13th.

There will be further process. There is potentially a report. Draft legislation will have to go through first, second and third readings, and public hearings again. Therefore, whatever report or draft legislation is put forward is not in stone. It doesn't prohibit the committee from continuing, and that's the way I'm looking at this. It's an ongoing process of development.

In terms of the Attorney General's legislation that was at the urging of the Minister of Public Safety or of James

Young's office, frankly, I don't care whether that's been done or not. I think the critical thing is that this committee has been charged with looking at all the information from all the expert witnesses, from all the ministries—I think we're going to finish with a few more ministries today. The committee is charged with deciding what type of report, what content they want in the report and what kind of draft legislation they want. As much as I was surprised that that existed and was never aware of it, frankly, I don't care that it exists, because I think we have a different mandate here to look at everything.

Mr Kormos: Chair, you've been a pretty good Chair, but you're also a pretty good member of the committee, wanting to engage in the debate. It's a dilemma, isn't it?

Having said that, I believe the matter of deciding whether it's a report, whether it's legislation or whether it's a report and legislation is not a matter for in camera. I want to make that very clear.

The Acting Chair: We can easily do that in public. We can make that decision publicly. That's not a problem. The committee has to decide—the mandate I saw from the Legislature was a report and draft legislation. Mr Kormos is basically saying that the discussion about whether we're going to do the two should be in public. Certainly, I, as Chair, have no problem with that being in public. Any comments?

Ms Broten: My suggestion is that it would be entirely appropriate to have the resolution of a discussion made public, but I do think that the members of the committee should have an opportunity to debate, because I think within the context of whether it's legislation or it's a report etc, we will be starting to talk about some of the particular details that really do come out of report-writing. It is my experience in public accounts and many other committees where you're doing report-writing that the members of the committee need an opportunity to have a discussion that won't be turned into a grandstanding exercise, and that often happens when it is on the record.

The Acting Chair: But remember, I think the question by Mr Kormos is whether the committee can have a discussion on whether or not it wants to proceed with a report and a piece of legislation. That's what he is saying. Am I correct in interpreting—

Mr Kormos: Chair, first of all, I am prepared to tolerate Ms Broten grandstanding in the event that the debate is on the record—I can live with that—or Mr Brownell, for that matter. But I am making it very clear that I think the fundamental issue of whether or not this committee drafts legislation is a matter of debate that should be on the record in its entirety, whether or not it prepares a report, because there are such things as no reports. I remember, as a matter of fact—you'll remember it as well—a committee in the last government reporting back a bill that consisted of a blank piece of paper. Remember that?

The Acting Chair: With no name.

Mr Kormos: Yeah. That was a pleasant experience, wasn't it?

Whether there's a report or not, these are matters of public debate. Once that's done, quite frankly, I still reserve the opportunity to determine exactly how a committee charged with writing a bill, if that's the decision of the committee, whether it does that in secret, in camera, or whether—this is a committee bill. We understand there are differences between private members' bills, government bills and committee bills—we learned this. A government bill, of course, is prepared in secrecy. A private member's bill is prepared in secrecy. Is a committee bill, by virtue of the fact that it is a committee bill, prepared in secrecy? I'm not prepared to concede that. I'm simply saying that in the first instance, the first challenge is to debate publicly, on the record, where this committee goes once it has heard all the evidence. I haven't heard all of the evidence, and neither have other people.

With regret, because of the confusion around that, I will be asking for a recorded vote. I'm going to be voting against the subcommittee, as I'm not prepared to concede that any element of this committee's exercise should be secret, behind closed doors, under wraps and hidden away from public scrutiny.

The Acting Chair: Further comments?

Ms Broten: I certainly think it is a very difficult task to extricate, perhaps, a discussion about the contents of a report or legislation from what route this committee will proceed along. If Mr Kormos does not want to follow what I understand to be the fairly normal course of writing reports—the decisions in the public accounts committee as to whether a report is written by that committee is a discussion that happens in closed session. It gives the members of the committee an opportunity to look at issues, to make some determinations about, “Do we need to do this, or do we need to do that?” I think it's entirely appropriate. The end result will certainly be public, because it will be clear. If there is a particular issue, I'd be more than prepared to consider whether or not we have a closed session discussion with, then, a portion of it being put on the record, if Mr Kormos wants to make it clear perhaps that he disagrees with the rest of us, and maybe that might be the concern he has. We can certainly resolve that at the time. I continue to hold the view that the members of the committee should be given an opportunity to express their thoughts in a closed-session committee meeting where we make some determinations about how we proceed.

1230

The Acting Chair: Further discussion on the subcommittee report?

Mr Kormos: Recorded vote, please.

The Acting Chair: I have a motion on the approval of the subcommittee report. I don't know how you want to take it. I think there are various changes put forward; do you want to just look at the whole report, sections of the report? How do you want to deal with it?

Ms Broten: I proposed some changes to the subcommittee report.

The Acting Chair: Therefore, we're going through section by section, then. If you have an amendment, please indicate, and we'll vote on each change and amendment.

The first item is: “That the committee meet in closed session on the following dates during the summer adjournment for the purpose of considering directions on the preparation of the committee's draft report/draft legislation”—

Mr Kormos: Point of order: If the motion is to approve the report of the subcommittee, then the motion is to approve the report of the subcommittee in its entirety. This isn't a bill with sections, where we do clause-by-clause.

The Acting Chair: I think there are some changes proposed on one part of the subcommittee report, and I said I would entertain those changes. It doesn't pertain to the whole subcommittee report.

Mr Kormos: OK. Then I'm prepared to move an amendment.

The Acting Chair: Yes, and you can do that. But first of all, I'd like to deal with the first part, that the committee meet in closed session. Is there an amendment to change number 1?

Mr Kormos: I move that part 1 of the subcommittee report be amended by deleting “in closed session” from the first line.

The Acting Chair: OK. All in favour of that amendment, please indicate by raising your hand.

Mr Kormos: A recorded vote.

Ayes

Kormos.

Nays

Arthurs, Broten, Brownell, Zimmer.

The Acting Chair: Therefore, part 1, there's no change there. So all in favour of part 1?

Mr Kormos: No, no. Point of order: This isn't clause-by-clause. We have to deal with the report in its entirety. The motion is to approve the subcommittee report. The subcommittee report can be amended, but it isn't clause-by-clause. It's the subcommittee report in its entirety, with respect.

The Acting Chair: So part 1 stands as it is.

Number 2: “That the committee continue its meetings with respect to the review of Ontario's emergency management statutes at its regularly scheduled meeting times after the House resumes, commencing with the first meeting date, Wednesday, October 13, 2004.” Any changes to that? No changes there.

Number 3: “That the clerk of the committee in consultation with the Chair be authorized to schedule witness on Wednesday, October 13, 2004.” Any changes to that?

Ms Broten: It's not my recollection that the subcommittee concluded that the witnesses would be scheduled by the clerk and the Chair. We talked about witnesses being scheduled that day, and it's my suggestion that they be scheduled by the subcommittee.

The Acting Chair: So you're questioning the clerk's recording of events?

Ms Broten: I don't recall that that was the discussion we had.

The Acting Chair: It is my recollection that it was agreed that the clerk and the Chair would do so.

Mr Kormos: If I may, to that motion—I presume it's a motion amending—we said very early on that the Chair and the clerk would have the authority to call upon participants to attend at the committee.

The Acting Chair: That is my recollection. OK—

Ms Broten: To deal with scheduling, as opposed to following up. I did make lengthy representations about this early in this process, following on the concerns that we need to ensure that we are fully inviting all of the outstanding members, that we deal with ensuring it's an inclusive process. It's my suggestion that the determination of the final list, if that is one of our last remaining days for witnesses, be made in an inclusive nature. I want to include you, Mr Kormos, and Mr Dunlop and have the subcommittee involved in making those decisions as to who the last witnesses will be.

Mr Kormos: You see, you may want to include me, Ms Broten, and I enjoy the opportunity to be included, but understand, I'm not on the same team as you. You may see this as fancifully a collaborative effort. I don't. You see, it's your agenda. It's your government that wanted the committee. It's your government that chose the subject matter. It's your government that is pursuing this, and it's you who has the majority on committee. The ball is in your court. If you want to ensure the adequacy of presentations to the committee, then you have the responsibility to do this. Let's make that very, very clear. We are not singing from the same hymn book.

The Acting Chair: We've got a change recommended for part 3, and the change is—could you read the change, MPP Broten, please, for the record?

Ms Broten: "That the clerk of the committee, in consultation with the subcommittee, be authorized to schedule witnesses on Wednesday, October 13, 2004."

The Acting Chair: OK. All in favour of the change?

Mr Kormos: Recorded vote.

Ayes

Arthurs, Broten, Brownell, Zimmer.

Nays

Kormos.

The Acting Chair: So that's been changed.

All in favour of the subcommittee report, as changed?

Mr Kormos: Recorded vote.

Ayes

Arthurs, Broten, Brownell, Zimmer.

Nays

Kormos.

The Acting Chair: The committee stands recessed until 1 pm this afternoon, same room.

The committee recessed from 1237 to 1309.

ONTARIO ASSOCIATION OF FIRE CHIEFS

The Acting Chair: I'm bringing the standing committee on justice policy to order. This is the afternoon session. The first presentation is the Ontario Association of Fire Chiefs, if they could come forward. Just to mention to members of the committee that this afternoon we have quite a full schedule, so we're going to try to stick as much as possible to the prescribed times. So the questions will be rationed to a certain extent.

Thank you for coming, gentlemen. As you know, this committee is charged with reviewing all statutes in the province of Ontario with regard to emergency management and preparedness, with the purpose of coming up with a report and draft legislation by November 1. I want to thank you in advance for making yourselves available. I appreciate your taking the time. If you could begin, you've got about a half-hour. If you could leave some time for questions or comments, it would be appreciated. Please identify yourself when you speak, because this is all recorded in Hansard.

Mr Rob Browning: Thank you, Mr Chair. My name is Rob Browning. I am the president of the Ontario Association of Fire Chiefs. Accompanying me today is First Vice-President Doug Tennant and one of our long-standing directors, Lee Grant. I will take the lead on our presentation, but I will also ask them to join in with any support that they might be able to add as we go along.

We do thank you very much for allowing us to be here today. We understand that there was a panel on August 16 that included essential services. Unfortunately, do to the length of notice, we just couldn't be here that day. So we do appreciate being here today.

We do have a presentation, but I would like to just encapsulate the high points of it. That way, it will leave some time for us to answer any questions the committee may have.

For those who aren't aware of what the Ontario Association of Fire Chiefs is, it's an association that represents 600 chief officers in the province, who have the honour of leading 27,000 firefighters, those being full-time or career, composite and in volunteer fire departments. Ultimately, we work under a number of pieces of legislation to carry out our duties, but the Fire Protection and Prevention Act is the prevailing act with which we function.

Fire chiefs are the people within the municipality who have been charged with being ultimately responsible for

the delivery of fire protection services to the councils. Also, many of our fire chiefs provide leadership in emergency management within their communities. It is the natural place for councils to look for this to be looked after.

As well, the Ontario Association of Fire Chiefs has worked very closely in partnership with the office of the fire marshal over many years to develop standards, both for positions within the fire service but also in terms of the fire code and so forth. We continue to work in a very good partnership. I think the results that are being experienced in Ontario, in terms of declining death rates and so forth, are a really positive indication of the good work being done.

Today, we're going to speak to three general areas: a need for a piece of broad and consolidated legislation for major emergencies; the resource impact that this is placing on municipalities; and what we believe the role of the provincial government in major declared emergencies should be.

Just a little bit more on what the fire structure is in the province: We have 503 fire departments that are divided between career, composite and volunteer departments. A career department is one that is solely staffed by full-time staff. We have about 28 of those in the province. A composite department is one that you would probably find in an urban or growing community. It's comprised of both volunteer and career people. We have 152 of those. Then we have 323 departments that are solely staffed by what we call volunteer firefighters. We have approximately 9,000 career firefighters and 18,000 volunteer firefighters in the province.

Fire protection services in this province are generally delivered by the lower-tier government. For that reason, one of the really positive aspects of the fire service is that when those communities need to assemble large numbers of trained people, generally the fire departments are the ones that can do it. It doesn't matter which type of fire department it is, whether it's career, composite or volunteer. There are variations of call-out mechanisms. Obviously, with career people, they are sitting in the station ready to respond or they're out in the community doing work ready to respond. Composite—again, you have a mixture of full-time and volunteer people. Then, in the volunteer department, they'll have some sort of immediate-contact process that may involve pagers or sirens or some combination thereof. So we can quickly assemble large numbers of people in major incidents who are trained and familiar with operating in a structured fashion on an emergency scene.

As well, to support the emergency management system, mutual fire aid has existed for many years in this province. It's an arrangement between municipalities where, when a municipality has a major event, a major fire or other similar emergency that exhausts the resources of that community, they can call upon their neighbours to provide support to them. This is done with no fees attached. It's a good-neighbour arrangement. Certainly it's very beneficial to communities, because you

can't always staff and equip yourself for the worst-case scenario.

The fire marshal appoints fire coordinators within each district, county and region within the province who play the lead in ensuring that the mutual aid plan is up-to-date. The coordinator generally holds regular meetings with the fire chiefs to deal with issues on a county, region or district basis.

Another arrangement we can work with is automatic aid, and that exists in some communities where, for example, a fire station in the neighbouring community is closer to a geographic portion of another community. There can be what we call automatic aid agreements set up where in fact the neighbour station responds first to the municipality. This is not as pervasive in the province at this time because it does involve some negotiations with local fire associations, and obviously they haven't been as receptive to that concept yet, but we're still working on that.

As well, over the years fire departments have evolved from just being fire suppression services. When you look at any fire service today, they deliver a myriad of services, and that includes vehicle extrication, we respond to medical calls, we do hazardous materials, we do confined-space rescue, other technical rescues, ice/water rescues. So there are a whole lot of skill sets that exist within the fire service today and it's much more than just a fire department. The types of services that are offered certainly are determined by the policy of the local council, but they're usually commensurate with the risk and demands that exist within that community.

That being said, even when the public doesn't really know who they should call, they generally call us. If they need help and they can't determine which other agency within the municipality can offer it, they call us. Luckily we do have—fortunately—some excellent firefighters in this community who are very skilled, creative and innovative. They generally handle these incidents very well and at least leave the situation stable. We're fortunate to have those resources within our local communities.

Everyone knows the impact of 9/11, and I'm not going to reiterate that. I'm sure you've heard a lot of that in your deliberations. But I think one of the things that 9/11 brought to light was that we had become somewhat complacent, as a society, with emergency preparedness. We hadn't had a lot of major catastrophic events occur in our geographic area, and at a time when financial resources were becoming squeezed, it was one area that probably was cut back on at many levels of government, including municipalities. But the recent events of 9/11, the ice storm, SARS and the Peterborough flood have brought a focus back to emergency preparedness.

As I said, we'll speak to three areas. The first one I'd like to speak to is legislative needs. We work under a number of pieces of legislation, the Fire Protection and Prevention Act being the primary piece that we use on the most common basis. But from time to time we do respond with the other agencies—and it's probably more common today than it's ever been—and we piggyback on

each other's pieces of legislation to allow us to do some things. There are a number of examples of that. Probably the one that's prevalent that I've been dealing with a lot within our local area is the proliferation of marijuana grow houses and other drug factories. When we respond to those types of events, we have multiple agencies, including police, responding there. From time to time we're questioning each other as to who has the authority to go in, who goes in first and why. I think that's just a simple example of why we need to have a consolidated piece of legislation that gives all of us the authority to do the job that we're doing.

1320

We know that in any major event it's not going to be one agency that will be able to handle that. It's going to take a strong team approach and it's going to take the expertise that all of the agencies have. That includes police, EMS; we see the growing role that health has in these events, public works and so forth, and the provincial agencies. I guess our point is that we need to have one piece of legislation that captures all the authorities that exist in individual pieces of legislation, and even within common law, to allow our people to do their job without question of where they would determine the authority.

One thing that can be very frustrating, because our people are very action oriented, is trying to have legal people figure out who has the authority to do what. There are arguments that these authorities exist within individual pieces of legislation. They may even exist within common law. But we, as the people who are out there responding on the street on a day-to-day basis, don't have time to go through those legal arguments. We need to know very clearly where authority comes from and, as long as our people are operating within the scope of their mission, there should be no question about what they have to do to get the job done to protect life and property.

The second piece within that legislation is some liability protection for all the responders. When we work under the FPPA, doing our general duties, we are protected, provided we perform our work in a bona fide way. We need to make sure that in a major declared emergency the same liabilities are afforded to everyone.

As well, the province and municipalities continue to promote volunteerism within communities. Bringing volunteers on now in a situation such as a declared emergency has some risks with it. We have some pieces of legislation now, the Occupational Health and Safety Act and so forth, that when a municipality takes on volunteers, they assume some responsibility for making sure these people are trained and work in a safe fashion. That creates some challenges. Number one, they're volunteers, they're not employees, and certainly employers have a lot more control over their employees than they do volunteers.

So there needs to be, in our opinion as an association, some protection for municipalities when they do bring on volunteers to protect them from some of the charges and

other things that can evolve from the various acts that are out there. That needs to be considered. That's not to say that volunteers don't need to be trained in what they're asked to do, but at the same time, we know we don't have the same control over those individuals.

Recently, in Peterborough one of the issues that came to light is that there's always political and social pressure to rescind the declaration of the emergency as quickly as possible, to bring some solace to people that the emergency is in a declining state. Unfortunately, when that happens, some of the powers that are allowed us when we're under that declaration also are rescinded.

Chief Grant, I'm sure, can speak first-hand on some of the challenges they've had in the recovery stage of the emergency and the need for some of the authorities to be able to deal with the situations. I don't know if he has anything to add to that, but certainly it's an issue that arose in Peterborough.

Another piece that creates some issues is that under the new Emergency Readiness Act and the requirements of complying with the act, we have to do risk and hazard assessments within the community. This is a fair expectation. As a matter of fact, in fire services we do a lot of analysis of our risks and our major occupancies because of the risk of fire and the environmental impacts that can result from some of those activities. A big issue is that not all of those companies have a requirement to report to us what they have within those buildings. So if we don't happen to get in to investigate what is there, we may not know. Like every organization, our resources are taxed and it's sometimes very difficult to get into those occupancies.

We would like to commend the province for its proactive approach in appointing the Commissioner of Public Safety and Security. I think we're all fortunate to have an individual such as Dr James Young leading, that being the inaugural person. Certainly, fire service has the greatest respect for Dr Young. He has supported firefighters in this province for many years. He's also well-known internationally for his experience, and we're lucky to have a person of his calibre lead us through this complex exercise of developing an emergency model for Ontario.

That being said, we really see, especially from the SARS incident, that there needs to be one central authority who takes the command role in a major provincially declared emergency. That role will certainly be one that's necessary, if it's provincial, national or international. Someone has to play the lead and has to be the command person who deals at an operational level to make sure that communications are solid between all the other agencies—whether it's at the federal level, the RCMP, whether it's at our border crossings—and that any directives that come out to any of the responding agencies are consistent and clear. There's just no room for freelancing in the event of an emergency.

One of the issues that came out that I experienced myself was the SARS event, where directives were coming out from different ministries with different vari-

ations to them. It created for us some problems in the field, when we had firefighters responding to emergencies being attired in different safety gear than maybe some of the other agencies. The directives that came to us as fire chiefs were very clear, but the directives that went to other people responsible for other emergency response agencies was different. So we see that there needs to be one central person or authority who's in command in a provincially declared emergency, and all direction should come from that person. The people who are affected and responding under those conditions of emergency should be abiding by that.

Certainly, we have a lot of experience in responding to emergencies, and you can't have multiple commanders overseeing the entire emergency. You need to have one person who's ultimately responsible. We think that the Commissioner of Public Safety and Security is an excellent person to take on that role. We highly suggest that to this committee. We don't think it's a role that should be delegated. We think that the person who is the Commissioner of Public Safety and Security should be a highly qualified individual who has the confidence of everyone at all levels of government to be that person. As I said, we're very fortunate to have Dr Young in that position right now, because I think he's doing an excellent job.

The next piece we'd like to speak to is the resources. As everyone is probably aware, fire departments are funded wholly at the municipal level. We do not receive any direct funding from the province, although there are some exceptions in northern Ontario and some small communities that do receive a little bit of assistance.

No one is going to argue that there is a need for us at the municipal level to be in a high state of readiness. Planning and practising are critical to the success of the execution in an emergency. Unfortunately, municipalities are under extreme pressure. It's not only from this legislation, it's from numerous other pieces of legislation. Tax increases are being kept as minimal as they can be; therefore, there aren't large amounts of finances to fund community emergency management coordinators, which are required under the new act. These people serve as the lead in the community. They liaise with Emergency Management Ontario regarding emergency measures matters. Unfortunately, most municipalities haven't been able to afford to hire an additional person to take on that role yet. In most communities, the amount of time being taken up is pretty close to an FTE; therefore, in a lot of cases it's being tacked on to people like the fire chiefs and deputy fire chiefs in the communities. And that's on top of a myriad of responsibilities and duties they already have.

As well, there are three levels of emergency preparedness that have been laid out to be accomplished over the next few years, those being the essential, enhanced and comprehensive. Again, preparedness should be commensurate with the risks and demands within the community. To expect a small community with virtually not many resources to start with and not that many risks and demands to have to go all the way through to a compre-

hensive level may be unrealistic. And if it is the province's wish that that be done, then at the very least the province should be funding the position of CEMC within the community.

We do have the opportunity from time to time to get funding from JEPP, but as with most programs, the constraints have increased and the funding opportunities have decreased. Again, we're being asked to put CEMCs in place. We're being asked to have emergency operation centres in communities that are fully functional and interoperable and so forth. We would strongly urge that the province consider putting some financial resources toward allowing that to happen.

1330

The last piece we'd like to speak to is the role of the province in major emergencies. For many years the province has indicated that it's not a direct deliverer of front-line services, and we have no problem with that approach. Since 9/11, thousands of dollars have been injected into EMO to ready the province for an emergency. We applaud that commitment. The funds are needed, as we've spoken to, to improve our infrastructure, provincially and municipally. We need to be able to train and fund CEMCs. We need to be able to establish functional EOCs so that we are ready when a major emergency happens.

We have heard and we have had some experience where Emergency Management Ontario is taking more of a front-line role. They're responding to the emergencies, and we're really questioning that role for the province. We think the support is better given to the emergency operations centre, where key municipal officials such as the CAO and the mayor are positioned and may need some guidance in terms of working their way to the provincial level. As I said, when we do need additional resources, we need to be able to have someone who can work and contact the provincial operations centre, your ministry action groups, to get us the resources we need at the local level.

We have experts out in the field who handle emergencies on a day-to-day basis. They're very skilled at it and they do a good job. In local municipalities, they work as a team. The police, fire, EMS, health units and public works people know each other and come together very quickly when they need to. That's our experience. To have someone at the provincial level, who really doesn't have any authority, start to join that group at this point just creates a mix for us that probably doesn't work as well. We see the role for an EMO officer being with our emergency operations centre.

I've already spoken to the communications challenges in terms of making sure the right and correct messages get delivered to all agencies. There are some initiatives right now in terms of looking at interoperability. I think at this point there's a lot of work to be done and it'll be a huge investment to make that work across the province over a long period of time.

We urge you, as a government, to examine your role in emergency management. There is a lot of expertise at

the municipal level. We need the support from the province to help us build our local emergency plans, but we have some excellent resources at the municipal level to actually handle emergencies.

In summary, we believe there is a need for a consolidated piece of legislation that gives us all the authority and liability protections that are required for us to do our job in the field. We see a need for some provincial support in terms of funding the community emergency management coordinators and creating emergency operation centres that work well and will make our emergency management system stronger. We believe the role of the province should be to support municipalities and their emergency operation centres in the event of a major emergency and we should leave the front-line mitigation of the emergency to the people who deal with it on a day-to-day basis.

Thank you very much. That's a quick overview of our—

The Acting Chair: Thank you, Mr Browning. We've got time for a question from each caucus; the Liberal caucus first.

Mr Brownell: Just a question: I'm not quite sure about the emergency operation centres. I spent a number of years on municipal council. I know we had the ice storm and we declared an emergency. We really had nothing in place because we were amalgamating. But after, they set up their amalgamated plan that included an emergency centre in the event that a disaster happened. Is this what you're looking at, a centre being set up in each municipality that is staffed and ready to go? I don't quite understand what these centres are like. Are they already established in cities in Ontario?

Mr Browning: Some cities do have emergency operation centres already. They are designed for a major emergency, either declared or leading up to a declared emergency, where a number of municipal, regional and even provincial people may assemble to make the broader decisions that are involved in an incident such as recently happened in Peterborough. They are not something you would use on a day-to-day basis, although many municipalities have a room that's multi-functional, and in the event of a major emergency, it's converted into the centre.

The Acting Chair: Mr Dunlop?

Mr Dunlop: I'm sorry, I was a few minutes late. I want to ask you, because you represent so many rural Ontario municipalities—I know Doug, of course, is from the township of Severn, which is where I live, and I'm proud to have him here. The role now, and in the future, of the mutual aid system is something I didn't really see mentioned here, but I'm very curious about your thoughts on where we may go with mutual aid in the future as far as things like train derailments, floods—things that you people are called in for. I think, in particular, of last year down at Gamebridge when we had that large train derailment. The Ramara volunteer fire department took over, but suddenly fire trucks and volunteers from all over the region where there to assist them. I'm wondering if you

see that role being very important in the future or dwindling and being taken over by an EMS type of system?

Mr Browning: We believe the mutual aid system will live many more years, and has to. It's a critical component of the whole fire protection system within the province. It has existed, I believe, for over 50 years now.

In the type of emergency you were speaking about in Gamebridge, the home fire department responds initially, uses all its resources, or close to maxes its resources, and then it can call into the system—in your case, the county of Simcoe system—which is set up so there's a response in progression of the fire services within that community. There is also, through the mutual aid system, the availability of calling other counties, districts or regions for specialized resources, if required.

So the mutual aid system is really a vast resource that's available within the province. As well, the province has taken a strong lead in setting up some level 1 and level 2 CBRN—chemical, biological, radiological and nuclear—teams, which are also available to respond in the case of a situation like Gamebridge. I see that being a system we're going to continue to build on.

Mr Dunlop: So we should build on that. There have been cases where I've heard that mutual aid wasn't welcome any more, and that sort of thing, in some of the volunteer fire departments throughout the different regions, not necessarily in our county, but I've heard different comments over the years. You're saying we should be building on that as opposed to weakening it in any way with any kind of changes to legislation.

Mr Browning: Most definitely.

The Acting Chair: Thank you, all three of you, for taking time and giving us some valuable input here. I think, in a nutshell, you've really focused on the need to consolidate and clarify the command role in an emergency situation. We'll certainly pay close attention to that suggestion; others have made the same point you have.

MINISTRY OF TRANSPORTATION

The Acting Chair: The next presentation is from the Ministry of Transportation: Malcolm MacLean, Shael Gwartz and Ross Flowers. Could you identify yourselves when you speak. We have 55 minutes allocated. We're going to try to be on time, because we've got a long-distance telephone hookup with the California Office of Homeland Security to follow. We appreciate your being here.

Mr Malcolm MacLean: Thank you, Mr Chair. My name is Malcolm MacLean. I am the director of the construction and operations branch with the Ministry of Transportation. It's a pleasure to be here today to speak about the Ministry of Transportation's emergency management program. I'm here today with Shael Gwartz, who is the manager of our maintenance office and the lead for our emergency management program. Also with me today is Ross Flowers, legal counsel with the MTO's legal services branch.

I have a slide deck with me today that I would like to speak to. I trust you all have a copy of that deck.

The Acting Chair: Yes, we do.

1340

Mr MacLean: I will attempt to move through these fairly quickly, in order to allow time for questions and discussion.

Slide 2 is an outline. I will be speaking about the Ministry of Transportation's emergency management program. I will lead off with our broad responsibilities, outlining some examples of transportation emergencies. I will speak about how we are organized for emergency management and the preparations we have in place. I will also outline our border crossing incident traffic management plan as an illustration of the plans we have in place. While the focus of the presentation will largely be based on highway emergencies, I do want to take a minute to review our role with emergencies related to transit, air, rail and marine. Finally, I would like to cover our lessons learned.

To start off on slide 3, we have included an extract from the Emergency Management Act. The objective of the act is "to protect property and the health, safety and welfare of the inhabitants of the emergency area." Under the act, the Ministry of Transportation has been assigned by order in council the responsibility for transportation emergencies. Transportation emergencies could include, for example, blockades of the highway for demonstration purposes, border crossing delays at international crossings, severe weather conditions such as flooding, power outages affecting highway traffic signals and crashes.

In addition, similar to other ministries, we are responsible for our business continuity during emergencies under MBS lead. This would include, for example, building security, where MTO is the lead occupant, IT systems failures, external labour disruptions and local power outages that could disrupt access to government offices.

I will be concentrating the rest of the presentation on transportation emergencies.

Slide 4 deals with transportation emergencies and identifies MTO's primary roles during an emergency. First, it is to coordinate our responses with other ministries, local municipalities, other transportation agencies and other stakeholders, including the private sector. We are also responsible for traffic control, detours and signing. MTO has the authority to close roads for repairs and construction for short periods or longer, if needed, provided a detour is in place. The OPP has the authority to close a road for other emergencies. We may be called on to provide advice on highway routes for evacuation purposes and to erect the necessary signing.

We also provide information to the public on road closures, detours, congestion and delays via the Internet, changeable message signs, MTO INFO phone lines and media bulletins.

We are responsible for making repairs to damaged highway infrastructure. This work would normally be coordinated by ministry staff, with the repair done by contractors hired by the ministry and working under the direction of the ministry.

Finally, we provide advice and guidance to others as requested; for example, to municipalities and other ministries. Just to illustrate, in the recent Peterborough flooding our staff provided advice related to municipal road repairs and cost estimates.

Slide 5 provides a broad overview of our management approach in responding to emergencies. Local MTO offices are routinely called on to respond to transportation emergencies. They are well versed in responding to emergencies in a timely and comprehensive fashion, in co-operation with others. Examples of these emergencies are crashes and spills on the highway; bridges that require emergency repair or replacement; flooding resulting in road closures and washouts that require repair; and other road closures, including train derailments on or adjacent to the highway, which may result in the need to detour traffic.

In some cases, the nature of the emergency will require a broader coordination effort by MTO's emergency management team. Examples of these include the ice storm in eastern Ontario; heightened international border security, which can result in delays and congestion leading up to border crossings; SARS; and the blackout of 2003.

Slide 6 outlines our emergency management team. If the provincial operations centre is on active status, we have a senior staff representative present to ensure full coordination with all ministries.

We have a central ministry action group, involving staff from all of MTO's critical business lines. This group coordinates the overall MTO response and, if necessary, is in regular contact with other transportation agencies. I also want to mention that the lead for this group is available and on call 24/7 to fully mobilize the entire team, if needed.

There are also regional action groups for each of MTO's five regions that operationalize response, including coordination with municipalities, police and other local stakeholders.

In the event of a nuclear emergency, a joint traffic control centre is mobilized, consisting of staff from MTO, OPP and other local police forces, as appropriate. Their role is to coordinate evacuations from the affected area.

Each of the various groups is in regular contact to exchange information. The team is also linked to our senior management staff, providing regular status updates and seeking approval and direction, as needed.

Slide 7 outlines our emergency management preparations. We have four full-time staff members dedicated to emergency planning and coordination.

We have several plans, either completed or underway, that deal with emergencies, including a general response plan; a nuclear emergency response plan detailing planned evacuation routes for each nuclear power plant that could impact Ontario; a border crossing incident traffic management plan, which I would like to speak to in some detail later as an illustration of our roles and activities; like other ministries, we are in the process of

developing critical infrastructure assessments and mitigation plans as well as business continuity plans.

We have an emergency operations centre equipped with an independent power supply and communication tools, including satellite phones, in the event of disruptions to other telephone systems.

Our staff has been trained in emergency response and we participate in annual nuclear emergency exercises.

In addition, we have established emergency detour routes in co-operation with municipalities to help address incidents that require complete closure of major highways such as the 401.

Slide 8 details our border crossing incident traffic management plan. The plan outlines the strategy for managing traffic impacts resulting from significant delays at border crossings. Similar to our other plans, the objectives are to minimize delays, maintain driver safety, minimize economic impacts, provide accurate and timely information to the public and coordinate input and support from others.

First, there is 24/7 monitoring of traffic delays by OPP and MTO staff supplemented by closed-circuit television cameras.

We have automated queue-end warning systems in advance of some border crossings such as the Highway 405 and QEW. These automatically detect the location of the queue end and trigger signs to advise motorists of conditions ahead. Mobile vehicles with sign boards are used in some areas and, if necessary, to supplement the automated systems.

When queues or delays exceed established thresholds, MTO staff determine the next mitigation steps, which could include:

- The activation of changeable message signs, providing delay information at key decision points along the highway. For example, changeable message signs in advance of the 405-QEW interchange would advise motorists of delays at both Fort Erie and Queenstown-Lewiston. This strategy balances traffic flow to the border crossings;

- On-ramp closure gates are in place in some areas; for example, starting 40 kilometres from the Windsor border. These can be closed to prevent traffic from entering the 401 when it's severely congested; and finally,

- The use of marshalling strategies for commercial vehicles destined to cross the border.

MTO also disseminates information to the public about delays through the MTO's Internet site, MTO phone lines, as well as bulletins to the media.

In addition, the plan considers the need for managing the public's and livestock health during prolonged congestion, in coordination with other ministries and local municipalities.

Slide 9 speaks to emergencies related to transit. GO Transit and municipal transit authorities have protocols for emergency response. GO Transit has a close working relationship with local police and they work closely with the MTO and the city of Toronto on emergency planning.

Municipalities have emergency plans for their transit systems, which vary somewhat depending on the scale of operation and complexity of the operation. MTO monitors transit emergencies through contact with transit authorities to track issues and develop coordinated responses as necessary.

1350

Slide 10 deals with emergencies related to air, rail and marine transportation. These authorities respond to emergencies based on established plans and protocols. In the event of emergencies, MTO would liaise with the appropriate authority to determine status and coordinate responses, if needed. In certain cases, such as train derailments adjacent to highways, MTO would be called on to assist the OPP with road closures and detours by signing.

Slide 11 speaks to lesson learned. One of the key lessons learned is the need for continuous improvement of plans and preparations based on experience. For example, the experience with the border delays as a result of 9/11 led us to prepare the border crossing incident traffic management plan. That plan has served us well in other situations: for example, during heightened border security at the time of the Iraq conflict.

We do recognize the need for continued improvements at border crossings. MTO, in partnership with the federal government, has a number of projects currently underway. Under the border infrastructure fund program, work is underway on several projects to improve highway capacity. In addition, in partnership with the federal government, we are developing an action plan for intelligent border crossings to determine how intelligent transportation systems like cameras, automated queue-end detectors and changeable messages signs can be further deployed to improve and enhance our ability to respond to delays. In addition, the ministry is working with our partners to develop cross-border transportation strategies which will drive future infrastructure investments at several border crossings, including Niagara and the Ontario-Michigan crossings.

We have also learned the value of staff training through simulated exercises.

In addition, we learned the value in establishing communication links with other agencies, ministries, stakeholders and the private sector. Such contacts are critical during emergencies. For example, as a result of the border delays experienced after 9/11, we have forged a much closer relationship with Canada Customs authorities, and we have now worked out a joint protocol for projecting border crossing times and delays.

Just to conclude, in summary, MTO is better prepared than ever to move people and manage traffic during emergency situations. We have more changeable message signs at US border crossings. This gives drivers real-time traffic information about what's ahead. We have also identified truck marshalling strategies to better manage heavy border traffic in emergency situations. We have clear plans and procedures to quickly manage traffic during emergency situations and/or in the event of infra-

structure damage. More detour routes have been identified and signed. We also have more changeable message signs across the highway system to give drivers real-time information about traffic questions. MTO has improved communication links with Emergency Management Ontario, municipal transportation departments and transit agencies to ensure a coordinated response to emergency situations.

That concludes our presentation. Thank you for your attention.

The Acting Chair: Thank you very much. We'll begin with questions.

Mr Dunlop: I've just got one question, and that's on the changeable message signs. We've got a number of them across the province. I happen to think they're very good. I think they send a strong message no matter what the message may be on the sign. Since you've put them up, have you done follow-up studies to see if what's on those signs is actually paying off? For example, if you're saying to someone that traffic is—I'm talking mainly about the flow of traffic right now. With things like, "The highway collector lanes are blocked. Use another lane," are people doing that? Are you getting any results from that?

Mr MacLean: The changeable message signs and systems across the top of Toronto have been in place for several years, actually. They have the ability to divert traffic to core or collector lanes, depending on where accidents are. In fact, they have the ability to observe problems and call in emergency personnel as necessary.

We have done several studies on the value of these in terms of relieving congestion. While I don't have the figures in front of me, they have proven their worth in terms of moving traffic through and getting emergency personnel to the scene of a problem much quicker than would have been the case before. While I don't have the data studies in front of me, we have assessed those and proven the value of them.

Mr Dunlop: OK. Just a quick question—I should know the answer to this. Do they work in a blackout? Are there backup batteries, or do they go out with a hydro blackout or anything like that?

Mr MacLean: We have two versions of them. We have versions that are permanently mounted, and in some cases those are linked directly to local power lines. So they would be out during a power outage. We have other situations—these are the portable ones you see regularly around the highway—where they're equipped with battery backup power and can operate, I think, for a period of 24 to 48 hours without connected power.

The Acting Chair: Mr Zimmer.

Mr Zimmer: I've listened carefully to all the plans you have to keep traffic flowing, roads and bridges open and so on. Perhaps you can help me on this: On all the 400 highways, the expressways and so on, my sense is that every time there's a local highway emergency, an accident of some sort, and recognizing they are often serious accidents and so on, the whole system just grinds to a halt and it seems to take a long time to get traffic

moving again. That, of course, is expensive and creates all sorts of other problems. What's the bottleneck there? What's the plan to eliminate that sort of thing? Sooner or later we're going to have a big crisis and the highway system will shut down. If what goes on in a typical summer in Toronto is a precursor of things to come, it'll be a while before things move again.

Mr MacLean: It's a very good question. A lot of work has previously been done on it by the Red Tape Commission. They worked with MTO, the OPP and others to devise a number of draft recommendations. The ministry has moved ahead and implemented many of those recommendations. We are continuing to work with the OPP to look at the remainder of those recommendations and implement those to ultimately improve the situation. So it is work underway, although I don't have a time frame in terms when that will be completed.

The Acting Chair: MPP Broten.

Ms Broten: I wanted to ask you what was the statutory authority that provided you with the ability to undertake traffic control and detour. We've been talking, throughout this, about evacuation and the ability of our province to respond to a large-scale emergency in terms of evacuation, and the ability to close off our borders for livestock, transport and simple travel. I'm wondering if, in the context of the authority you have in the ministry to close down roads, you could speak to whether you have the tools necessary within your ministry to assist with that type of limitation on transport in the province.

1400

Mr MacLean: The authority we currently have is expressed under the PTHIA. It allows the Ministry of Transportation to close a road for a period of 72 hours. If the closure needs to be longer, then we have to provide a detour to the highway. The police have the ability to close a road for any emergency purposes whatsoever.

In terms of other things we might need to do, it's a good question and something we have been considering carefully. We're currently in the process of reviewing our legislation, the experience with some of the previous emergencies and some of the future emergency scenarios. We expect to complete this review over the next several weeks and would be in a position advise the committee at that time whether we feel there are changes that would improve our ability to deal with emergencies more expeditiously in the future.

Ms Broten: Thank you. We have requested ministries to provide us with a response to this query by September 8, so I hope that's the deadline you're working toward. Obviously, it's the mandate of this committee to look at what legislative tools we need in the province to respond to emergencies, and your insight and expertise on that front will be invaluable to the committee. So we look forward to receiving it.

The Acting Chair: I had a couple of questions. First of all, in terms of prohibition of travel, in the province of Nova Scotia they can prohibit travel on roads and there is a fine imposed if you disobey that. MTO can declare a road closed—I guess that's how you prohibit travel—but

what happens if someone travels on roads that are closed? Is there a penalty or sanction?

Mr MacLean: Yes, there is. I don't have the details in front of me, but the PTHIA does describe financial penalties to anyone who disobeys a road closure sign. So there are penalties in place for that, typically fines.

The Acting Chair: And in terms of your work in emergency situations, one of the things we're hearing over and over again is the lack of coordination. For instance, we've had the fire chiefs and other organizations say, basically, "Tell us which ministry is in charge, who's in charge."

Is there anything we can do in updating our emergency statutes in terms of helping the MTO do its work better—I know you may not be able to answer this today, but perhaps in a further written submission. What can be done to make the lines of command and control clearer so there isn't delay or dispute? Everybody wants to get the task at hand done, but there seems to be a lack of cohesiveness and, given the very nature of an emergency, there is always a lack of clear understanding of lines of power. Can you respond to that? Is there anything we might be able to look at to try to facilitate what you, as MTO, are going to do in an emergency situation?

Mr MacLean: I think we'd like to take that away as something we could think about and respond. We would like to consult with colleagues and look at some of the experiences we've had before we respond to that. We can certainly undertake to do so in the same time frame as we're responding to the other items.

The Acting Chair: I was noticing that we've had a lot of information brought to us about livestock and animal health as it might impact on safety. One of the powers you have, it seems, is managing public and livestock health in coordination with other ministries. Do you know what role MTO plays in managing livestock health?

Mr MacLean: What we were referring to there was situations where there may be congestion at borders and commercial vehicles transporting livestock would be delayed for extended periods of time, in which case there are some livestock, for example, that would need water—it can't go without water for very long. What we were referring to there is working with other ministries—the Ministry of Agriculture, for example—to understand some of the implications of that, and then we would be working with local municipalities and others to ensure that those kinds of services could be provided.

Mrs Sandals: I presume that when you get into issues around air travel and rail travel, there is some shared jurisdiction between the provincial and federal governments. Is that correct?

Mr MacLean: In the air travel circumstances, the majority of the air travel would be under federal statute.

Mrs Sandals: What about rail travel?

Mr MacLean: The majority of rail travel is as well.

Mrs Sandals: What about waterways?

Mr MacLean: That is the situation for waterways as well.

I should add the MTO does actually operate eight ferry services. We also operate 29 airports in the remote part of northwestern Ontario. Both those services would come under our responsibility for managing emergencies associated with them.

Mrs Sandals: I was wondering, given that crossover in terms of transportation—roads, I presume, are pretty clearly our jurisdiction, but in some of the other forms of travel there are maybe some cross-jurisdictional issues. Do you run into, in an emergency situation, any problems in terms of interjurisdictional authority?

Mr MacLean: That hasn't been apparent so far. We are in the process of meeting with Transport Canada to talk about emergency measures in a broader way, and that subject will certainly be raised there to clarify what those lines of responsibility are. As I say, it hasn't been a problem to date.

Mrs Sandals: OK. One of the things the truckers had raised is rules around maximum hours that a driver can be on a road. Just because of backups or perhaps in an emergency situation, where you're calling on the trucking industry to have emergency delivery of supplies, there are issues around the regulations, but it isn't entirely clear always whether that's federal regulation or provincial regulation in terms of where the authority lies. Are those issues that have come to light when you have been dealing with emergency situations?

Mr MacLean: I don't think there's an issue with a misunderstanding of who has authority to look after that. Those working hours are stipulated under the Highway Traffic Act, and they're quite clear in there. There is provision of an exception to that hours-of-work legislation for emergency services. Those would be services such as providing essential services that impact the health or safety of individuals. So there currently is, within the act, provision for an exemption to the hours of work.

Mrs Sandals: Is that something that can be delivered fairly expeditiously, or is it a case of individual permits?

Mr MacLean: I think it really boils down to the driver keeping accurate records about what he was doing and justifying the nature of his trips and the reason why he had to work extra hours. So it really is incumbent upon the driver to keep accurate records and justify to the authority in terms of his need for exceeding the hours of work.

The Acting Chair: One of the questions that was raised by the truckers yesterday was whether or not there's a stockpile of oil or gasoline or diesel reserves in the province of Ontario. Does the Ministry of Transportation keep a stockpile of reserves in case of a protracted emergency?

Mr MacLean: No, we do not.

The Acting Chair: Is there any contemplation of maybe doing that, or why wouldn't you have reserves, given that you might be unable to, in a blackout or an elongated emergency, acquire fuel? Maybe you could respond to that in that written submission later. This is one of the things that has been brought to our attention. We're doing a survey of all ministries to see if there are

any kind of reserves of gas or oil that might be available, especially for emergency vehicles, like your snowplows, for instance, that we could access if we had a protracted blackout in the middle of winter. How could we get available diesel or gas for the snowplows so emergency vehicles can then access the roads? That's maybe one of the questions we'd like you to look at for us.

1410

Mr MacLean: Certainly. I think there is a plan in place for that, but I can't speak to the details. We can certainly do that in a follow-up submission.

The Acting Chair: OK. One final question is in terms of the management of accidents at accident scenes on provincial highways. I know that Dr James Cairns, the deputy chief coroner, has just done an analysis of the delays caused by the fatality, the accident with the GO train at Union Station. He has come up with a series of recommendations in terms of speeding up the protocol in dealing with an accident scene to ensure that it's done in a manner that doesn't, in essence, create a ripple effect in other delays, accidents and problems for people.

You mentioned the royal—not the royal; it was anything but royal. What was that commission?

Mr MacLean: Red Tape Commission.

The Acting Chair: Yes, the long coats, the guys with the coats—the Red Tape Commission. They made a series of reports. Is anything being done that's available for us to look at in terms of how you deal with the closure of highways? I know that after 72 hours, supposedly you're supposed to have detours available. The question I have is, what happens up to those 72 hours? What's the lead agency, government body or level of government that handles that road closure that may be up to 72 hours to ensure that people who have medical conditions or have run out of gas in the middle of a freezing winter and are stuck on a 400-series highway without any way out—is there a plan to deal with that?

Mr MacLean: Yes. I should be clear that the closures for emergencies of that nature are normally managed by the police. It's their function to provide such activities.

In terms of what we are doing to speed up opening up those sites, I did speak before about dealing with some of the recommendations from the Red Tape Commission. In terms of the specifics of plans to deal with inconvenience and people caught up in that, I can't speak to that at this point in time. We can certainly endeavour to get back to the committee on that.

The Acting Chair: I know that MTO does the traffic information boards on the highways for safety etc. Is there a way that MTO can communicate with ordinary citizens, or does any government agency or body communicate with ordinary citizens caught in a protracted road closure situation? Or do you just do it through the private media news alerts? How is it done?

Mr MacLean: It's normally done through issuance of bulletins to the media. They tend to be very good at picking up that type of information and broadcasting it across the radio. We do post information on the changeable message signs, but they may not necessarily get to all the individuals.

The Acting Chair: Thank you very much for taking time and contributing to the work of this committee. Again, if you want to help us with further details on some of the questions that were asked, we'd appreciate that. Thank you very much for appearing.

Members of the committee, we are trying to connect with California. What I might suggest is that if we connect a little earlier here, we might get more time to ask questions of the homeland security office in California. Can we be back here perhaps in 10 minutes? Would that be OK?

There's a recess for 10 minutes.

The committee recessed from 1415 to 1426.

CALIFORNIA OFFICE OF HOMELAND SECURITY

The Acting Chair: Members of the committee, we'll come to order. We have a teleconference connection established with the chief counsel for the California Office of Homeland Security, David Zocchetti. David, this is MPP Mike Colle. Can you hear us?

Mr David Zocchetti: Good afternoon, gentlemen. I can hear you just fine.

The Acting Chair: Thank you very much. With us here we have the committee on justice policy, and we're reviewing Ontario's statutes for the purpose of coming up with a report and draft legislation in terms of ensuring that our statutes meet the needs of future—hopefully, not too many—emergencies. Thank you in advance for being with us. If you could begin with a presentation, then we will follow with questions and comments, if that's OK with you.

Mr Zocchetti: That would be fine with me, and I greatly appreciate this opportunity to speak to you. As you know, California's had the misfortune of having a number of both man-made and technological disasters over the years, and we've hopefully learned from some of our experiences in those disasters.

Just last week, Governor Schwarzenegger declared a disaster in Shasta county, which is in the northern part of the state, for about an 11,000-acre fire that burned about 80 homes and displaced about 350 people. So some of our experience in disaster unfortunately is very recent.

What I'd like to do is give you a very quick history of how we got to where we are today legally in terms of the disaster area, and then talk about six of the major components of our state disaster laws.

First with the history: Some of the history of our disaster statutes actually started prior to World War II but, really, World War II was the precipitating factor in a number of statutes, as crisis situations often are.

Predating any statutory activity in California dealing with emergency management, back then, Governor Earl Warren, who went on to greater fame after leaving his Governorship in California, got started, during his Governorship, the creation of what is called the California master mutual aid agreement, and that was a contract that bound all of the 58 counties in California

and approximately 600 cities in California to an arrangement whereby cities and counties will share their emergency resources in times of emergency or disasters. Dating back to the early 1950s, all California counties and all cities bound themselves together so that when one jurisdiction needs assistance, be it for a fire or for a civil disturbance or for a flood or earthquake or whatever it might be, they will send their resources to other jurisdictions to help out, to the extent it doesn't exhaust their capability beyond a basic minimum level.

That master mutual aid agreement was really the starting point. Later on, going forward in history to the early 1970s, that master mutual aid agreement and a number of other concepts were placed in California state law. Keep in mind here that when the laws were created in that 1950s to 1970s period, California was a much more rural state than it is now and had a lot less governmental resources at every level—local government and state government—to actually deal with emergencies and disasters. So a lot of the laws that were created back then, including the master mutual aid agreement, reflected that simpler situation we had in California. Most of the fire departments were volunteer fire departments at that time. Most of the county sheriffs' offices just involved a couple of officers. Most of the ambulance services were only in major jurisdictions. So the resources were very thinly spread throughout the state, and the laws back then reflected that more rural nature of the state.

In the early 1970s, though, the laws were updated, and I'll be talking about those in a second. There was also a national effort that a number of the states looked at to have essentially model disaster legislation. California's disaster legislation looks like that of many states, but of course it has some unique attributes to California. But there was model national legislation in the early 1970s, and California adopted much of that and then incorporated its own unique systems.

Getting to that, I'm going to go over approximately six major components of the California emergency management system from a legal perspective, and these, I should emphasize, are just really the highlights. I welcome you to ask questions about the details of any of them.

The first of the six is the California Emergency Services Act, which is our basic law dealing with the emergency management area here in California. It provides a broad array of powers to the state Governor. Keeping in mind the history here, that it was started with World War II, where the powers of government were greatly expanded on a number of levels, our Emergency Services Act gives the Governor complete power to direct the resources of the state at every level, basically up to the point that he cannot, of course, violate the state or national Constitutions. So the Governor has a substantial amount of power. He can order state agencies to do various things that are well beyond their normal jurisdictional capability. He can move funds between accounts in order to address the emergency situation. He can have special appropriation powers. He can waive any

laws, both statutory and regulatory, so if he needs to waive an environmental law or a procurement law or something in the process area, he can waive those laws to expedite the disaster response. So the first component is the powers of the state government.

The second component that I'd like to mention is that the state law creates an emergency organization. I mentioned earlier the master mutual aid agreement that binds all cities and counties in the state together to assist each other. But California has also adopted a single management system that basically has to be used on all emergencies of any significance. We call it the standardized emergency management system, or SEMS. It is based upon the incident command system that emanated from the fire services in southern California, and I think it's used pretty much nationwide in the United States at this point. We now have the standardized emergency management system in California that must be used in all emergencies by all levels of government. The advantage has been there—of course, as you know, in all emergencies it's always the question of who's in charge and who has what responsibilities. The adoption of that single organizational structure has addressed a lot of the communications and coordination issues that we experienced during disasters. So the emergency organization adoption is a key point of our disaster management laws.

The third thing that's provided in our emergency management laws is our office, the state Office of Emergency Services, which is actually part of the California Governor's office. It is a separate and independent agency from the other more encompassing agencies in California government. Our director reports directly to the Governor, and is appointed by the Governor. So that creates an important communications link, particularly during disasters, between the administrative officer, if you will, and the elected officer for the California emergency management situation.

That, of course, is under review. As you may have heard, Governor Schwarzenegger has instituted a process called the California performance review, often called the blowing-up-the-boxes situation, where all organizations in California are currently under review and subject to change. So the organizational structure of OES may be changing in the future, depending upon how that review goes over the next few months.

The fourth item I was going to mention, and it relates back to my earlier comments about the master mutual aid agreement, is that state law actually incorporated that contract that was signed by all the counties and cities. So basically it is now a fundamental requirement in California that these jurisdictions assist each other. An interesting attribute of that master mutual aid agreement is also that it binds the local governments to any agreement the state might enter into with other states and the national government. For example, California is a member of a compact with the other 49 states to provide disaster assistance. By virtue of this master mutual aid agreement and state law, all local governments are also bound to the contract between California and all the other states.

The fifth thing I was going to mention, and it's particularly important in California, is that the Emergency Services Act provides certain privileges and immunities for any actions taken by emergency services individuals or agencies during a disaster. Of course, we have to be conscious of situations of negligence or gross negligence during an emergency and how people function in their job and whether damages and injuries occur. When the law was created in the 1970s, there was enough foresight to consider this situation and recognize the fact that if people or organizations had to be looking over their shoulders while they were responding to a disaster, those people and organizations might be inhibited in responding. They may think about things twice. They may think about their statutory or court-driven liability if there is a disaster and not respond as quickly as possible. So in our statutes is a broad provision that pretty much immunizes both individuals and agencies for their actions that might be found negligent during a disaster. Our California courts have upheld that on a number of occasions, all the way up to the California Supreme Court. So there are broad protections particularly for tort violations during a disaster.

The final thing I was going to mention, item number 6, is that we've also put a recovery program in place in California. So we not only have disaster legislation to deal with the response aspect of a disaster but we also have a program that to some extent is modelled on the US federal model, under the Stafford Act, to provide recovery, particularly for local governments, after disasters. We have a process where, if the Governor of California proclaims a state of emergency, he can essentially open up the state general fund to assist, at least on a proportional basis, local governments and special districts that have impacts on their infrastructure from the disaster and have some extraordinary response costs. This is not used real frequently, maybe only four or five times a year, but it really provides an intermediate step between local assistance and federal assistance in California whereby the Governor can take a specific action based upon his emergency powers to financially assist local government infrastructure that is damaged by the disaster.

With that, I will just close. That's, as I say, a very broad-brush overview of our emergency services laws here in California. Of course, the devil, as they say, is in the details, so at that point I'd like to open it up to any questions you might have.

The Acting Chair: Thank you very much, David. We'll have questions and we'll start with MPP Broten.

Ms Broten: One of the things that we in the province have been talking about over the last three weeks is finding the proper balance between giving the state or, in our case, the province the tools it needs to respond to extraordinary circumstances and the individual rights of our citizens. I'm wondering whether you can comment on the balance you've reached in California, having regard to things like evacuating locations, for example, and not allowing people to return to their homes, closing

access to private property, requests for information, all the types of things we see many jurisdictions having as extraordinary tools during an emergency situation, and whether any of those have been challenged in the state of California as to infringements on personal civil liberties.

Mr Zocchetti: We have laws in the areas that you mentioned broadly in terms of evacuation, quarantine, closing out areas, or isolating individuals and areas during times of disasters. Like everybody else, we have struggled with the balance between the civil or individual rights of people and the need for government, representing all the people, to accomplish a particular goal in a disaster. The debate has been obviously heightened because of issues of bio-terrorism and the need to be able to respond quickly.

I'm being really clear here: There is a division in how people feel we should address this. In California currently, we are still basing things like evacuation, quarantine and isolation on laws that go back, for the most part, to the early 1970s, where due process steps were not included as part of the law. So if in a jurisdiction a public health officer, for example, calls for a quarantine, he or she pretty much has unfettered power, once the criteria are met for calling for a quarantine, to establish that quarantine in a particular area to achieve public health goals.

1440

In terms of court challenges to that, there really have not been any, emphasizing that most of the quarantine and evacuation actions taken in California, even though we've had some very major disasters, are very isolated, often only impacting a few hundred people. So those cases have not come to court. As I say, there has been a lot of debate as to which due process requirements should attach to that, but so far, those have not been challenged in California, although I know of discussion in California and a number of other states.

Ms Broten: Just a follow-up question to that on issues of due process, the broad powers that the state Governor has: In what way is the Governor called to account for decisions he or she may make in terms of the direction of resources? For example, during emergency management, is there an obligation to report before the state Legislature in some way, or is it truly just political accountability: If you do the wrong thing, you may have problems in the future?

Mr Zocchetti: As you know, we're very familiar at this moment with the recall process for the Governor. So yes, if people were truly unhappy with the decisions made by the Governor during a disaster, they could take immediate political action relative to the Governor.

Also in place in statute is something called the California Emergency Council. That pretty much has not been a particularly viable organization, but it touches on your question in that it's a council made up of a particular group of legislators. It also has representatives from a number of specialized areas; for example, the American Red Cross. In a theoretical sense, that council is supposed to meet whenever there is a disaster to essen-

tially vet some of the decisions made by the Governor. As I say, though, in practice that council has not really been used. It was created during a time when California did not have a full-time Legislature, which we do now. I think it was created essentially to take the place of the Legislature if it was not in session during a disaster.

So right now, the Governor's power is pretty much unfettered, other than politically. Of course, the Legislature could always take action vis-à-vis the budget, but even in that area, the Governor has pretty supreme powers once a disaster is proclaimed.

The Acting Chair: MPP Zimmer.

Mr Zimmer: You touched briefly on the relationship between the chief civil service authority and the chief political authority in crisis management. I'm wondering if you could just elaborate on the situation in California. Here, we have heard arguments on both sides: that in the close management of a civil emergency the authority should rest with the chief civil servant responsible; another line of thought is that day-to-day leadership in an emergency crisis should rest with the chief or senior political authority. What's your experience in California?

Mr Zocchetti: I think I can probably give you a longer answer than your question really—

Mr Zimmer: We're interested in it.

Mr Zocchetti: Let me just give you some background, then. In California—I'm speaking from the state perspective, of course—by law, all disasters are local issues. Local government remains in charge of a disaster until such time as they basically say they need state help and they've declared a local emergency. But even at that point, local government is still in charge of the resources to address the disaster situation, no matter what it might be. So they retain, if you will, tactical control at the local government level.

Dealing with essentially the issue of who's in charge of those resources is quite complex. In any emergency response—and I've been doing this for almost 30 years—you have basic operational and tactical issues that are very technical, and you really need to have someone who has knowledge of the fire science involved, the geology issues involved—there are just so many technical issues involved. Really, the tactical operational issues have to be, to use the term, essentially in civil service hands, or at least in technical hands and not the political appointees' hands.

On the other side of that coin, of course, the political appointees are the ones who can truly be held accountable for any errors of judgment; for example, we were talking earlier about the call for a quarantine or an evacuation. So, really, the political officials have to be in the mix, at the very minimum for purposes of accountability, but also a lot of calls during a disaster are really policy judgment calls. A lot of the things are not science. There aren't triggers for certain things, be it quarantine or anything else, and at some point, somebody just has to make a policy call for the good of the community or for the good of the larger area. In my mind, that really speaks to the politician or the appointed individual to make those decisions.

Mr Zimmer: So I understand, then, that the technical decisions tend to rest with the civil service side and, if it gets into a policy or political choice, you look to the political authority.

Mr Zocchetti: That's accurate. In most cities and counties in California, on paper the head of emergency management is usually the chairperson of the board of supervisors or the mayor, but in actuality there's usually a step right below that that's actually doing tactical control of the emergency management situation.

But as you probably know and have heard from earlier testimony, the lines aren't always that clear between what is tactical and what is, if you will, strategic in terms of political things. So there's a lot of drift between the political element of disaster response from the politicians down to the civil service, and obviously a lot of the tactical issues flow uphill because they have such broad consequences in terms of their human outcome and in terms of their fiscal outcome.

Mr Zimmer: When you get into those situations where the distinction between tactical and political judgments is a grey area, do you have any sense of the experience in California in sorting out those sorts of jurisdictional blends?

Mr Zocchetti: I haven't seen, in my years, that much tension between the vertical issues in terms of political and civil service tactical issues. That usually runs pretty smoothly. I think, typically, the politicians do not want to be involved in the tactics of the situation during the event because of their lack of expertise in that area.

After the fact, we have the interesting criticizing of all the tactical issues. We're still dealing with the political fallout of our southern California fires last year and whether one particular helicopter should have dropped retardant or not dropped retardant. So, afterwards, the politicians are often involved in the tactical second-guessing, if you will, which is frustrating but also appropriate in terms of the application of the people's resources.

Typically, during the incident, we do not often see the blending between the political and the tactical. Most of our issues lie more on the horizontal plane: jurisdictional disputes between the fire service and law enforcement service or the emergency medical service, or between governmental entities—cities and counties and city agencies—as to who has responsibility for what. That is more the issue we have here.

Mr Zimmer: My last question is on horizontal disputes, jurisdictional disputes at the horizontal level on the tactical side. What sort of mechanisms do you have in place to give somebody the hammer on a jurisdictional dispute? How do you sort that out?

1450

Mr Zocchetti: Really, what we've put in place—and it doesn't answer the question 100%, but it's the best we have found to address it. I mentioned earlier that we have adopted the standardized emergency management system, which is an outgrowth of ICS, or the incident command system. We have adopted that at all levels of

California government in all disciplines. That has been a 10- to 15-year process to integrate that into all the training for all the disciplines at all the levels. It's been very expensive, but it has paid off greatly in addressing the issue that you raised on this horizontal plane.

One of the key tenets of the standardized emergency management system or even ICS is something called unified command. So we have essentially given up trying to say that somebody is in charge of this incident and somebody else in charge of that incident, because in reality there was no way to change areas of responsibility and too many of our disasters involved all disciplines, if not a large part of the disciplines. So through using the unified command system, everybody that has a legal role or a legal responsibility in the response to the incident gets to be in the unified command.

We often see situations where we'll have—especially when we have a lot of wildland fires—five different fire chiefs in the unified command, plus a sheriff, because of the responsibilities for evacuation, all in the unified command. Ostensibly they are all in charge, but what they're truly in charge of is just what their legal responsibility area is. One fire chief might just have legal responsibility for his or her community and another might have the responsibility for a much different area. As I say, the sheriff may just have responsibility for the narrower area of evacuation. They're all in charge of their area, but by using the unified command, they can collaborate on the decision-making to the extent it impacts the other individuals' jurisdictions.

The Acting Chair: MPP Sandals and then MPP Kormos.

Mrs Sandals: We really appreciate your taking this time for us today, Mr Zocchetti. You mentioned, in a situation of emergency, that the Governor has quite broad powers. One of the things we're examining is what, if any, emergency powers should exist in an emergency situation in Ontario. I wonder if you could tell us what sorts of powers, historically, the Governor has exercised, exactly what those powers are, and what the challenges have been around exercising those powers.

Mr Zocchetti: Sure. I'll do the best I can. One of the things you need to consider going in on this is that the Governors, over history, probably have never exercised their powers to the extent they're actually allowed under law. They to a great extent have never gone as far as the law would probably allow in this. So the number of legal challenges that would sort out the limits on the Governor's powers are few.

Within that overall context the Governor in California, as I mentioned, has the ability to waive all regulatory laws. So in terms of environmental laws, procurement processes, licensing requirements, days that have to be set before somebody has to post bail, all those types of laws the Governor can waive and has waived in various disasters.

Like yourselves we are limited, essentially, by the national laws to some extent. The Governor can't waive a law that would endanger a particular species of animals if

that would not be allowed under federal law. There is a check on that in terms of the federal law.

The Governor can't do anything that would violate any state constitutional issues in terms of state constitutional privacy rights etc, another check on the Governor's authority.

The Governor also has the authority, when he or she has proclaimed a disaster, to seize private and public property. That has been used in a very limited way by the Governor, but I think it's an important aspect in terms of disaster response. It has come up a few times, historically, when the government has had to seize property in order to destroy it, to get it out of the way of fire or earthquake removal. It has come up more recently in modern history with the energy crisis situations we've experienced over the last decade, where Governors have had to seize contracts between the energy providers and their sources of energy. That has been a unique aspect within the Governor's powers and it was not challenged successfully.

I'll essentially conclude with that, basically saying that the Governor has pretty extensive powers. To the extent he has exercised all those powers, that hasn't come to fruition, at least not recently.

Mrs Sandals: And you mentioned that there had been very few legal challenges, which I presume means that there have been a few. Could you tell us very briefly what was challenged and what the outcome was of that challenge?

Mr Zocchetti: The only challenge that really came by some, for example, during the energy crisis was over how long the Governor could operate under his emergency powers. The energy crisis was going for some time. Governor Davis at that time left his proclamation of a state of emergency open so he could continue to exercise his powers under that; I gave the example about seizing contracts for energy. That was challenged in the courts. Basically the courts came back and said, "Well, there are probably some limits to how long the Governor can keep his state of emergency open and exercise those powers, and the Governor needs to be mindful of that. But so long as the conditions of emergency exist, he can continue to exercise those powers he would have flowing from that situation." So that's really the limit.

The other major court challenge—I think I alluded to it earlier—was in terms of liability protection. There have been challenges over the years. For example, if a governmental entity, during the course of responding to an emergency, broke a state law that hadn't been otherwise waived by the Governor, could the agency or its employees be held liable? The Supreme Court said, "No. We do not want governmental entities looking over their shoulder during an emergency response, concerned about liability." So they are not liable for those types of negligent actions even if they do break a law. Those are pretty much, in summary, the challenges in that area.

Mrs Sandals: Thank you very much.

Mr Kormos: By the way, you should know that a large and growing number of Ontario voters have an

intense interest in California's recall provisions and procedure. But I appreciate that that's not the subject matter of today's discussion. We may have to have you back here in a couple of months' time.

Let's talk about evacuation in the context of a fire, because I think we can all understand that. Most of us folks watch the television news coverage in the area west of Los Angeles, the Topanga canyon, those kinds of places where we have these fires that put residential areas at risk. What does evacuation mean in real terms? What happens in the course of an evacuation? Do you go knocking on all those rich people's homes and drag them out, kicking and screaming? What are the nuts and bolts of an evacuation?

Mr Zocchetti: We have a lot of debates in California as to whether our evacuation laws are mandatory or voluntary. If you really drill down to the details, our evacuation laws probably can allow for a local government to have a mandatory evacuation. So in a legal, theoretical sense, you can have a situation where we could drag those rich people, kicking and screaming, out of their houses.

Mr Kormos: Sounds good to me.

Mr Zocchetti: Yes. But in a practical sense, generally local governments who do the evacuation in most cases—it's not usually a state government doing evacuations—treat evacuations as voluntary. What they do is make very clear to the people who should be evacuated for a fire, or for whatever reason, the need for evacuation, and that in fact if they don't evacuate, that will be the end of governmental assistance to them in terms of that particular emergency. So if a fire is bearing down on their home, somebody would either knock on their door or go down the street with a bullhorn, or via helicopter or some other notification processes electronically, via phone, letting these people know that they have to evacuate, they can't equivocate, they must leave, "Here are the risks involved." I even heard rumours that they just ask the people who their next of kin is and then leave them, basically, to go through the evacuation process.

Mr Kormos: Obviously it's one thing to evacuate, indeed even easier, a very small community, a hamlet, a rural type of community as compared to—heck, I've seen the traffic down in southern California. It looks like there's a perpetual evacuation.

We watched the news coverage of the evacuation of southern Florida. What are the logistics of evacuating a major community when you already have dense populations and crowded, exhausted highways?

1500

Mr Zocchetti: They're immense. There'd be no difference here from in your province. The issue underscores part of what I think you're asking for here. In those southern California fires, we lost 12 people, and those people were lost, we believe at this time, because they didn't get the notification about evacuation quickly enough. But any time you're trying to evacuate a major urban area, it is very difficult.

Florida, fortunately or unfortunately, with the experience with their severe weather situations, has probably

done more evacuations than anybody else and they still end up with situations of loss of life and serious injuries when they do evacuations.

In California, by the nature of our disasters, most of the evacuations have not been on a large, large scale. Really, you can't evacuate for an earthquake, you can't evacuate for a flash flood situation like we had in southern California. Even in a slow-rising flood, which is more typical where I live here in Sacramento, California, evacuation is still fairly localized. It's more likely you have situations of people being isolated and having to get supplies to them. Though with that said, we do place a lot of effort in our planning side on trying to figure out the logistics of actually evacuating large numbers of people. Obviously, this effort has been accelerated because of threats of bio-terrorism, but we also have chemical facilities throughout California, so we have evacuation plans that local governments developed to deal with threats that might come out of those.

But there's just no way to get around the logistical issues. They are just there and we use all the techniques that anybody else would use in terms of phasing the evacuation and opening up highways to two-way traffic in both lanes. We've done all those kinds of things that any other state would do, but it's still a huge logistical nightmare.

Mr Kormos: Finally, is there an emergency management reform movement in California, that is to say, lobbyists or legislators who are advocating fundamental changes and, if there are and they are, what's the drift, what's the bent? What are these people seeking?

Mr Zocchetti: I'm not aware of that in terms of any kind of campaign to make a significant change in emergency management in California. My sense is—and I'm fairly parochial in this, obviously, given where I work—the state is pretty happy overall with its emergency management system. We have the perverse benefit of using the system a lot because we have a lot of disasters. So most of the bugs have been worked out of the response aspect of the system, and it works very smoothly. I mentioned the example of southern California fires, where people are still arguing whether a helicopter should have been called back that was applying retardant to the situation. Those discussions we typically have are much more specific to a specific incident. There's not this broad campaign to reform emergency management at this point. Most of the reforms I think occurred—and there I mean wholesale reforms. The most significant changes in emergency management occurred about 15 years ago when we adopted the standardized emergency management system, that common organizational system. That was probably the most fundamental change.

Really what we're looking at here now in California is more the emphasis by the Governor for an overall reform of government. The focus is not specifically on emergency management, though we will probably be affected by the change, but it's looking at all aspects of government, not just the public safety aspect.

Mr Kormos: I am allowed one more, and that is that the sort of natural disasters that you've experienced, as

has Florida, have had huge costs attached to them, just extraordinary, multi-billion-dollar property loss costs. How does the insurance industry respond to those and have they, in effect, punished property owners and premium payers by either excluding them from future coverage once they've made a claim for a catastrophic loss or by diminishing their coverage? Have either of those happened, and is there a legislative movement or legislative response to that?

Mr Zocchetti: I'm not an expert on the insurance side of this; I will just give you a broad brush. In California, after a catastrophic event like the Northridge southern California earthquakes or some of the major fire seasons we've had, what we've seen is more the fact that insurance companies just won't write new policies, either in a particular area or they'll leave the state entirely. We had a situation a number of years ago, which I think Florida also experienced, where insurance companies just would not write insurance any more in the state. But there's kind of an ebb and flow to that, because we're a huge market for the insurance companies and there are many areas of the state that don't have as many disasters as others. So the companies come back, driven more by the market than anything else. But I've really never seen issues where they're just punishing individual policyholders. Generally the insurance companies I think look at it from a public relations marketing perspective. They pride themselves—in fact, in California, and I don't know if they do this elsewhere, they advertise how quickly they respond when a disaster occurs, with their adjusters on the spot. That's almost a marketing tool for them—although there have been issues over the years with the insurance companies.

Mr Kormos: I've been trying to encourage folks up here to develop a public non-profit insurance system like they have in Saskatchewan and British Columbia.

Mr Zocchetti: Actually, we do have an earthquake insurance authority here in California, but that has been a very difficult thing to fund because the damages from earthquakes are just so catastrophic. In California, the potential is that it could be so widespread, we could lose the entire LA basin or the entire San Francisco Bay area. The ability to come up with an underwriting scheme that anybody could actually afford is very difficult, but we've also made efforts in that area.

The Acting Chair: Thank you very much, David, on behalf of the committee for an absolutely incisive presentation. A synopsis of your legislation in such a time frame was quite astounding and, considering the scope of your emergencies and your emergency statutes there, it's quite impressive. On behalf of the committee, I certainly give you our thanks and appreciation and hopefully we can return the favour to you some day. We wish you the best of weather and the best of health and hopefully you won't have to put those statutes to work for a while. Again, thank you very much for making yourself available and please send our thanks to—do you report to Tom Ridge?

Mr Zocchetti: No. Tom Ridge is the secretary for the federal Department of Homeland Security. Here in

California, I report to the director of the Office of Emergency Services, Henry Renteria, who then reports to Governor Schwarzenegger.

The Acting Chair: Well, you can thank Governor Schwarzenegger, who we know, and your superior. Again, we're deeply indebted to you taking this time. It's been valuable to us.

Mr Zocchetti: I wish you the best of luck in your deliberations. You've taken on a very important job.

CANADIAN CENTRE FOR EMERGENCY PREPAREDNESS

The Acting Chair: The next presentation, a little closer to home, is the Canadian Centre for Emergency Preparedness. Adrian Gordon is the executive director. If you could come forward, Adrian, we would appreciate it. You've got a half-hour, and if you want to leave some time for questions or comments, feel free to do so.

Mr Adrian Gordon: May I begin by saying how much we appreciate the opportunity to make a presentation to this committee. I don't believe my presentation will last for much longer than 15 minutes.

My name is Adrian Gordon and I am the executive director of the Canadian Centre for Emergency Preparedness, or CCEP. For those committee members who may not be familiar with CCEP, we are an independent, federally incorporated not-for-profit organization based in Burlington. Our vision is: "Safer, more resilient communities through emergency preparedness."

1510

CCEP is perhaps best known for presenting the World Conference on Disaster Management, or WCDM, now regarded as one of the largest and best conferences of its kind in the world. This year's event, our 14th, was held in Toronto just two months ago and attracted over 1,300 experts, practitioners, academics and planners from 43 countries to address the question: "Are We Really Prepared?" The consensus of professionals from many fields of emergency management was that we are not.

CCEP has been a member of EMO's emergency management doctrine and standards committee since November 2002. We have been honoured to participate in what we regard one of the most exciting developments in emergency management in any province or state in North America in recent times.

In reading the proceedings from previous committee meetings, my impression is that members have focused on the powers invested in the Premier and his ministers to effectively manage emergencies in the province. Our focus is on a different part of the legislation: the regulations that set the standards for the development and implementation of emergency management programs under sections 2.1 and 5.1 of the Emergency Management Act.

We understand that these regulations were drafted over a year ago and we are deeply concerned that the delay in approving the regulations is having a profound impact on the communities that are on the front line of

emergency management in the province. I should mention it is our belief that the delay is also impacting on the levels of preparedness in those ministries that are now mandated to develop and maintain emergency management and business continuity programs. In a nutshell, the delay in passing these regulations into law is seriously affecting the province's ability to effectively respond to, manage and recover from the emergencies that await us.

I do not propose to dwell on the very real risks that the province faces in terms of emergencies; other presenters have described these in some detail. However, I would add that reports in the media just this week on the return of El Niño and the discovery of bird flu for the first time in Malaysia are illustrations of some of the potential disasters that may come our way in the months to come.

The committee will not be surprised to hear that since 9/11, public expectations of how emergency management agencies and governments at all levels deal with emergencies and disasters is now far higher than ever before. Some of the delegates at our conference commented that if we are unable to meet those expectations when the next event happens, as surely it will, the economic, social and political implications will be profound.

Recently, the Institute for Catastrophic Loss Reduction and Wilfrid Laurier University released a research report entitled *Emergency Management and the August 14, 2003 Blackout*. Based on an Ontario survey conducted in February 2004, it found that respondents believe that both local and provincial governments should do more to effectively prepare communities for emergencies. A recommendation of the report is that "Especially in quiet, non-crisis periods, all levels of government must continue to contribute to, and upgrade, their proactive emergency management."

I will return to this issue of public expectation, as we believe it is directly relevant to the current situation in our province.

The Emergency Management Act provides a broad framework that governs emergencies in Ontario and provides for the declaration of an emergency. The detail of how the province's emergency management strategy actually works and the implementation of performance standards and compliance, both necessary to move it from the voluntary to the mandatory, is to be contained in regulations. Without the regulations in place, the government has no authority to implement the details not contained in the act itself.

The implications of this are clear. Whereas the act sets out what is to be done in broad terms, the absence of the supporting regulations means there is no enforcement, no penalty, no incentive for emergency management programs to be put in place in Ontario's municipalities or for municipalities and ministries to conform to common standards.

Let me provide you with some examples. The following are taken from discussions I have had recently with a number of community emergency management coordinators, or CEMCs, in both large and small communities.

The deadline of December 2004 for all municipalities and ministries to attain the essential level is meaningless;

the deadlines for enhanced—December 2005—and comprehensive—December 2006—even more so.

As the deputy fire chief of one municipality said to me: "There's not a lot of teeth in Bill 148. There are no regulations for the essential level."

Let me stress that the essential level is to bring all municipalities and ministries up to a basic level of emergency preparedness. In our opinion, it will only be at the enhanced and comprehensive level that the government of Ontario can justly claim to have met due diligence in protecting the lives and property of its citizens in emergency situations.

Many CEMCs have been working hard to meet the requirements of the new legislation, but it is very hard for CEMCs to obtain approval for funding and resources from their municipal councils if the regulations are not in place.

Another CEMC said to me: "That is already happening. Why should councils commit resources and money to something that is not regulated, when we have so many other priority issues to deal with?"

A major feature of the regulations will be the introduction of an incident management system, which has been developed from the incident command system that is commonly used in Western Canada and the United States, as we have just heard is the case in California. This will greatly improve the ability of all levels of government and emergency response agencies to communicate during a disaster. However, without the regulations, it is highly unlikely that any real progress could be made in this respect.

In our presentation to this committee on October 7, 2002, we commented that long-term political commitment was essential to an effective emergency management program in the province. If I may quote from that presentation:

"I mentioned ... that mitigation and preparedness are commonly given little attention and even ignored in normal times. It is essential that Emergency Management Ontario be provided with the necessary funding and resources to be able to effectively manage this program. Our concern is that when the perceived level of risk and threats to our way of life declines, funding may be reduced to meet other needs."

For just over a year, Ontario has been spared a disaster of major proportions, notwithstanding what happened in Peterborough a few weeks ago. As a disaster management professional, I know that after every major disaster complacency returns, levels of preparedness slip and the political will to support emergency management programs declines.

We at CCEP and, I believe, other members of the Emergency Management Doctrine and Standards Committee, are deeply concerned that the great steps that Ontario has taken over the last few years, which have made it a leader across the whole of North America, are being stalled by political inertia. It does not reflect well on us, on Emergency Management Ontario, on the government of Ontario or on the honourable members of the Legislature.

Before I conclude, I would like to offer two quotations. The first is from the late Sir Winston Churchill:

"One ought never to turn one's back on a threatened danger and try to run away from it. If you do that, you will double the danger. But if you meet it promptly and without flinching, you will reduce the danger by half."

1520

The second is from the current Premier, when he addressed the Ontario Legislature on October 31, 2001:

"I can tell you, Minister, that I have had the opportunity to visit ground zero and I have personally witnessed the destruction. I have talked to New Yorkers and I have talked to many people who are expert in the matters of emergency preparedness. One of the things they keep driving home is that one of the most important things we have to do is have in place, in all of our cities and towns, an emergency preparedness plan."

Make no mistake. The longer we enjoy relative freedom from catastrophic events, the closer we are to the next one. The time to prepare is now. The time to clear legislative roadblocks to becoming prepared is now. The public expectation that their government is doing what needs to be done has never been higher. Will Ontario meet that expectation before the next disaster?

Thank you again for allowing us to make this presentation.

The Acting Chair: Thank you. We have time for some questions.

Ms Broten: Thank you very much. I guess I would suggest to you, regarding the statement about political inertia, that all of us here have been meeting and talking about this important issue for the last three weeks. I guess I can give you some hope that there is no political inertia on our part, that we are examining the issues with a great deal of intensity, that we have had three weeks of public hearings and have been willing to hear from groups that bring diverse perspectives to us to find the right balance in the province. Certainly, we appreciate the work that you've done in this sector for many years. I hope that we will be able to answer "yes," that the province is ready to respond and that we have the right tools in place. That is the mandate of this committee and the reason we have been looking at the issues of tools and powers. That is primarily our focus at this point in time.

I do want to ask just briefly in terms of recognizing the area of expertise that you have in terms of the emergency management plans, the representations that you've made reference to from October 7, 2002, would have been before the committee hearing that proposed legislation at the time: is that correct?

Mr Gordon: I believe so.

Ms Broten: OK. Perhaps, Chair, so that we can build on that, recognizing what has been pointed out to us today, we might get the clerk to provide us with copies of the deputations from 2002, which would have been focused on the emergency management plans but which might provide us with some solid background just on that front.

The question I had for you was with respect to your conference that was held in Toronto. Who would be the

experts and practitioners and academics? How are they invited? Could you just give us a little snapshot of the conference? I'm wondering whether there are conference materials or deliberations we can get copies of from that conference.

Mr Gordon: The conference program is developed by CCEP. So our focus in the conference is determining the theme of the conference, identifying what are the most pressing issues of concern to professionals in the disaster management field, all fields. And then we combine a number of invitations to individuals who we have identified. Principally, those would be key speakers. Then we call for presentations, which resulted last year in about 300 submissions, principally from the United States and Canada, but from many other parts of the world. We then have a small committee that reviews those presentations and makes those selections.

To give you an idea of the kind of people who are among our delegates, we have both federal and provincial ministers who participate, including Dr Jim Young. We have professors from universities who may specialize in general fields of disaster management or specialist areas like telecommunications.

This year we focused on one area of considerable concern among the disaster management practitioners, which was the treatment of trauma management, how to effectively deal with both professionals and civilians who have been traumatized as a result of crises. There are different opinions as to what works and what doesn't work. That was the subject of several presentations and panel discussions. The range is very broad. The focus is practitioners in the field. We try to put on a program that also provides for the opportunity for academics to present their findings and research to the practitioners.

Ms Broten: Were there conference materials prepared?

Mr Gordon: We have copies of most of the presentations and we can certainly make those available to this committee.

Ms Broten: Thank you.

Mr Gordon: We would be very happy if any members of this committee would like to attend next year's conference.

Ms Broten: We plan to be done with our work by then, but we might take you up on the offer.

The Acting Chair: If we're allowed to. I have another question here from MPP Brownell.

Mr Brownell: I have a question related to a statement here, and I'll quote: "... I know that after every major disaster, complacency returns, levels of preparedness slip, and the political will to support emergency management programs declines."

I went through an emergency in my municipality when I was the mayor: the ice storm of 1998. We had just amalgamated two municipalities and the ice storm hit. We hadn't even fired up our township hall. We were flying by the seat of our pants, basically, at that time. We put together a plan in the new amalgamated municipality, and very regularly, in fact, I saw just the opposite of what

this statement says here. I'm just wondering how serious it is, from your perspective, in Ontario with regard to your statement. I see the opposite in the municipality where I live, but how serious is it across the province?

Mr Gordon: I wish I heard more case studies like that. That would be an excellent presentation at next year's conference.

I wouldn't like to say how Ontario compares with any other province in Canada or any other jurisdiction in North America, or around the world, for that matter, but I know this is a real concern. Even after 9/11, the signs in certain sectors, both in the public and in the private world, even after, I would think, five to six months—I guess it's part of our characteristics as human beings that once we have experienced a major disaster, there comes a point when we want to get on with our lives again. I think it is a very real problem.

1530

The power outage was perhaps the most recent classic example of a major crisis, where frankly we got off very lightly. I don't think that in very general terms in Ontario we have learned the lessons that we should have, particularly when you consider what might have happened if, say, that power outage had happened in the middle of winter. But certainly I think if you ask any professional in any of the fields of disaster management, whether it's response, whether it's management recovery, academics—I can think of Joe Scanlon, who is head of Carleton University's emergency management department, who has actually written a study on this research which is entitled something along the lines of *We Don't Learn Our Lessons*. So it's a problem, but it's also a characteristic or nature of the business that we're in.

The Acting Chair: Thank you. Just for the record, Mr Gordon, I want to mention that I've been doing some research in terms of the public hearings on Bill 148. I think you're one of six people who presented. I think two of the six are here. Dr Young was there; you were there. I would just let you know that we have a sense of urgency ourselves, and that's why the committee has invited and listened to over 50 organizations already. That's quite an improvement over the last process.

I should mention that we've been, I think, seeking advice far and wide. We've just talked to, as you know, the coordinator from the state of California. We've talked to Quebec. We've talked to the authorities in Nova Scotia and Alberta. That wasn't done before. We've done that. We have talked to the city coordinators for emergency services in Sarnia, Windsor, Ottawa and Toronto. They've been here. They weren't here last time. We've talked to over 12 ministries. That wasn't done last time. We've also brought in a private sector panel, which wasn't done last time: Bruce Power; Bell Telephone, which is going to present; Enbridge Gas; the Canadian Bankers Association, which is here. I could go on and talk about the information we received from Deborah Whale about zoonotic dangers. We brought in the agricultural sector: the poultry farmers' association, the marketing boards. So it's not as if—we've brought in

climatologists. We brought in one of the foremost climatologists in North America, Dr Smit.

This is, I think, an attempt by us as members of the committee—it is not as if we do not have the intention to ensure we are prepared and to do whatever we can as a committee to search far and wide for information so that we can either put into effect statutes or amend statutes to ensure that, as a province, there isn't inertia in this area. I just want to put that on the record, that it's not business as usual. We've gone through a pretty extraordinary exercise here over the last three weeks. I wanted to say that on behalf of the committee.

Mr Gordon: If I could respond, I certainly commend the committee for allowing so many people and so many representatives from different parts of the community to have input into what's going on. I guess the message that I'm bringing from the trenches, if you like, is that there has been tremendous work done by this province and, from the municipal perspective, there has been a very clear message that all the municipalities and the ministries that I mentioned will be expected to meet certain standards within certain deadlines. That, however, is not going to happen without the regulations being in place. The first deadline is at the end of this year. If the regulations are not in place, as is happening in some communities that have, as I'm sure you are all too familiar, limited budgets, priorities coming out of their ears—if something isn't mandated, it's easy enough to put it off until those regulations are in place.

The Acting Chair: We appreciate that. I thought that was a very important submission you made in terms of the regulations as they pertained to 148. We hope, as a committee, to address that very thing. That's why I think it was important that you brought it to our attention. We appreciate your contributions, not only to this committee, but the interest you've had in this important area for the public safety in terms of emergencies. We hope to continue to count on you for advice and we will possibly be back to you, and appreciate you taking the time to do so here today.

BELL CANADA

The Acting Chair: Next on the list is Bell Canada, Kelly McDougald, the senior vice-president, and Claude Elliott, director of industry marketing. Could you come forward.

As you know, we invited various private sector stakeholders to be part of a panel with this committee. I know we couldn't fit everyone into that time frame before, but we do appreciate you coming here representing Bell Canada, a critical cog in our communications scheme of things in the province of Ontario.

Ms Kelly McDougald: Thank you. We very much appreciate the opportunity to share our experiences and insights with you as a result of our work within Bell Canada during times of emergency and crisis. Does everyone have a copy of the presentation?

The Acting Chair: Yes, we do, thank you.

Ms McDougald: Let me just provide context for you on chart 1. What I'm hoping to do this afternoon, certainly leaving much time for questions, is just to take you through a bit of the experience Bell has had so that you have an appreciation for the scope and extent of work we've undertaken in various situations throughout the province; secondly, to position for you some of what we think are very strategic initiatives being undertaken at multiple levels of government with regard to preparedness for emergencies and how we would hope the province could participate in either expediting or supporting some of those initiatives going forward.

Just to provide some context, on chart 2 with regard to Bell's experience, I'm sure most of you are aware, but we do run all of the 911 centres across the province for daily emergency response situations.

We have had extensive experience with regard to supporting many different aspects of both the public and private sectors during the SARS crisis, the power outage last year, the ice storm and how it impacted eastern Ontario and Quebec. Those are exceptional situations in crisis.

We also have ongoing and recurring crisis situations like forest fires in northern Ontario, where there's continually a requirement to set up emergency communications systems, often in schools or public community centres, as we relocate people out of their communities and into those crisis management operations, and also to support the front-line workers in those operations.

One other element I'll draw your attention to as we go through the discussion is our involvement in supporting anti-terrorist activity with regard to the Internet and cyber attacks. I'll speak to specific references on that, but clearly, our forms of communication are not necessarily just voice communication; we are much more heavily reliant upon data communication and the Internet, and we see that as an area for disaster preparedness as well, as many people attempt to sabotage and bring down those forms of communication.

Turning to chart 3—it's the chart entitled "In Service Today"—as I mentioned, we do provide all 911 services across the province, both those run by the OPP on behalf of multiple communities and those run by local municipalities themselves.

There are two extended forms of 911 service also available to you today. One is cellular location service, which continues to improve on an ongoing basis so that we can locate you on your cell through triangulation of the cell sites to be able to provide emergency services to you, whether you be on a roadside of the highway, in an area not covered by wire line services etc.

We also have the ability to provide, through our local communication services on campus environments, specific pinpointing of disasters. So if you were at the University of Toronto and you called 911, for example, we can pinpoint where within the university's physical campus you are requiring services without you having to articulate that to the emergency services responder.

We also have the capability—and this is lesser known—to provide priority access to dial tone on a local

switch basis. You well know that when a crisis occurs, many people first lift the phone. In fact, many of them call our operators to understand what's going on and they become a front line of information dissemination. But that does challenge the network in terms of providing dial tone. There is the opportunity to prioritize access to dial tone for emergency services respondents like police, fire, ambulance, government etc, and that does happen with access to local dial tone today. So, heaven forbid a crisis occurs while you're in a city voting on a Canadian Idol contestant and everybody's got the phone off the hook, either for the crisis or the Canadian Idol. We can prioritize who has access to dial tone, to the local switch.

1540

I'll emphasize that we do not have the ability today to provide access from the local switch into the broader network. That's a service, while technically available, that has not yet been implemented in the network today. So while you're guaranteed dial tone locally, you can't necessarily get out of your community and into the broader network.

We are there, as I mentioned, in multiple times of crisis. If I refer to the SARS incident specifically as an example, the Toronto public health hotline handled over 300,000 calls during that crisis. It peaked at 47,000 calls in one day. I offer you that that's in contrast to an average day of 6,000 calls, so you can understand the relative volume they were dealing with. We were there immediately to provide incremental services capacity bandwidth and to offer support on location at all of the command centres in order to support that initiative. Clearly SARS, as you know, went well beyond the boundaries of both the city and the province in terms of its impact in the community and the visibility of our responsiveness.

If we move to the chart titled Professional Technical Team, I will suggest to you our learnings on that were that there are multiple forms of communication facilities available, whether through interactive voice response systems that can help qualify a language, where the call needs to be directed to, provide repetitive kinds of information, take information electronically or whether it's through Web casting to disseminate information, or video conferencing. All of those exist but were grossly underutilized during the time of the SARS crisis. The challenge in that situation was an absence of governance as to who was going to prime the messaging there, who was going to set up these capabilities, who was going to be the coordinator of the services. So while technology existed in order to alleviate some of the challenges and disseminate information, a lack of governance and co-ordination really prohibited the maximum exploitation of that infrastructure in order to support what could have been a much more effective infrastructure for communications.

That was highlighted again—I'm sure you're all well familiar with it, but if you turn to the next chart with regard to a number of the panels that existed on SARS and the reports that were fed back, clearly there's an

opportunity for enhanced communications infrastructure; simple things like, as you well know, cell phones can't be used in hospitals, so what do you do within a hospital to disseminate information to front-line workers who are mobile within the hospital? Many of our health care workers in the community also don't have access to cell phones or wireless PCs. Again, how do you contact them? The technology all exists; it's just a matter of coordination and an overall game plan.

Of course, at the same time, we had the issue of the largest blackout in North America. You're well familiar with the impact of that on business overall. We clearly were very proud of the communications infrastructure and how it operated during the blackout. The wire-line network for voice communications stayed active during the entire outage. We did have challenges with the wireless network, as it is a contention-based network and many of the cell sites are diesel-operated, on tops of roofs and in steeple towers etc. The greatest learning for us in that incident was both the reliance on the wire-line network but also the new and growing dependence on wireless and an expectation of wireless service provision at the same level as exists in the wire-line network itself. I particularly draw your attention to the OPP as an example, which very much depends on wireless operations from their cars. In a contention-based environment, we were challenged to provide dedicated services to the OPP, because it has always been perceived as the second-tier network and not the primary network. We have done considerable work to reinforce the resiliency of that network since the time of the blackout.

At the time of the blackout, we were very pleased with the Bell response to ensure that we had all of our own contact centres up and running—911 absolutely remaining in operation and able to field all calls. We were able to ship generators from Quebec and moved in 150 generators. Pay phones also provided a valuable source of access for people who were otherwise reliant upon cellular phones. We were quite proud of how the network operated, but with the key learning, as I mentioned, of the new dependency on the wireless network.

There was a similar situation—and I won't go into detail—with the ice storm; again, the wire-line network operating well, both within Quebec and Ontario, and our ability to move resources between them.

The one thing I would highlight to you in this regard is that one of the things we have learned in this process that we'd be pleased to share with government is all of the associated implications with workforce management: how you deploy resources, how you pay resources, how you manage resources when you're picking them up from their primary work location and dispatching them otherwise. What happens when you move workforce from Ontario to Quebec or within Ontario? How do you pay them? How do you manage them? How do you guarantee their availability? We have done considerable work and thought on that within Bell Canada for disaster preparedness, and I think you saw that operationalized as we deployed those resources in those crises.

For more traditional and recurring types of disasters—as I mentioned before, we do have regular situations like fires in northern Ontario. In those situations, we use mobile services, typically satellite, and have numerous mobile units that we can deploy across the province for both emergency services front-line workers and for those people who have been displaced from their homes and relocated elsewhere.

As I mentioned at the onset, I'd like to draw particular attention to the requirement to focus our energies on and have a plan around terrorism specific to the Internet and the data communications network. I'm not sure if you are aware, but at the time of the blackout last year when government shut down their offices for the week with the intent to conserve energy, there was also a very significant Slammer virus that occurred that also shut down all of the province's operational computer systems as well for a large portion of that week. While that was not obvious to the public, it was a crisis in and of itself. Provincial workers would not have been able to come to their offices and operate because of the virus. So we had these two concurrent issues going on at the same time, one certainly less visible but of no less impact with regard to the operation of government and their ability to sustain services. I believe there has been a tremendous focus on voice communication, video communication and broadcast services but less so a focus on data communication services. Certainly we would suggest that there's an opportunity to expend energies in that regard.

Just in summary, with regard to experience, we have demonstrated certainly within our own infrastructure and our employee base our disaster readiness and ability to sustain service and recover from outages in that environment. We do have extensive experiences in emergency preparedness planning, both for our own organization and also working with numerous organizations in the private and public sector—the banks, the insurance companies etc—and we offer that experience to government as you look at what we should be doing within the province.

In summary, on chart 14, we simply learned, as you all well know, that communication is critical in times of emergency; not only communication infrastructure but governance of communication messaging and hierarchy and how that should be handled. We were responsive to anyone who called us during the outage and in the various disasters, but it's not always intuitive for us who the adult in charge is, so to speak, and how we should be best assisting in terms of responding to that. Clarity of those mandates and ownership would be helpful.

We also learned, as I mentioned, that the wireless network has become as critical as the wire-line network, as has the Internet network as well, and we need to deal with multiple stakeholders across all those mediums as we look at being prepared on a go-forward basis.

I'd like now just for a minute to turn our attention to some of the strategic initiatives we're taking on a go-forward basis, where we would welcome the involvement of the province and your participation.

The first is an emergency notification system we have been trialing within Sarnia. As you know, Sarnia has the potential for petrochemical disasters within the community and they have been working quite proactively in terms of emergency notification beyond just sirens, horns and broadcast across cable TV. I'm on chart 16 now. The system we have implemented with them on a trial basis, which has been very successful, is essentially a reverse 911 system, where instead of people calling in to us on a crisis basis, we actually place out calls to them. Calls can be placed to cellular telephones and to wire-line telephones. They can be placed as a voice response. They can be placed as a digital message out to PDAs, BlackBerry devices, PCs etc. We have the ability to roll this out across the province to all communities. The technology, again, exists and has been proven with Sarnia. The question is now one of funding. Is it funded through the local municipality; is it funded through the province? This particular project received initial trial funding through the feds, but the sustainability and mass deployability of this is not yet defined. You can think of the advantage this might have had in a Walkerton situation, had we been able to broadcast and phone everyone's home immediately and advise them. So our challenge now is how we deploy it en masse without having to go community by community and fight the funding battle within each individual community. The next couple of charts simply take you through a pictorial of that.

1550

Similarly, as I mentioned before, on high-priority routing we do have the ability to prioritize and allocate dial tone in the case of emergency. Right now, today, as I mentioned, that's done to the local switch and it is managed by Industry Canada. They keep a record of 180,000 names right now which need prioritized access to dial tone. That's done through an application process on the Web, but once you get to your local switch, there's no guarantee that you can go beyond that into the wide area network. What we have proposed to the federal government is that they extend that across the country and the ability that you can prioritize calls anywhere in the country. The US has already deployed this widely as a result of 9/11. It does require incremental funding and we have provided that submission to the federal government in order to support that through what is called the deferral account, or a pot of monies that is set aside as a levy on the telephone companies. To date, we have not had support from the province to say, "Hey, this would be a tremendous thing. It would assist in our emergency preparedness within the province and be an asset to communities as well." We would welcome your support of the allocation of that funding to ensure that we have that kind of capability across the network.

Similarly, with regard to civic notification on chart 21, there are numerous other ways that we can provide notification, other than the Sarnia example or prioritized dial tone. We offer you creative ideas like the lottery terminals that we have across the province that are owned

by the province. Those are in every single convenience store; there are thousands and thousands of them. They're migrating to a digital infrastructure and there is the possibility, as an example, to broadcast information to all of those terminals across the network. So we have a tremendous opportunity, with the introduction of Internet protocol technology, to now use multiple devices owned by the province, whether it's MTO kiosks, lottery terminals etc, as emergency notification vehicles for the dissemination of information.

Finally, I draw your attention to 311. This is a service that has been applied for by a number of municipalities to augment 911 service. It is to take information queries that are not of an emergency nature and direct those away from the 911 system through one centralized telephone number. Toronto, as an example, has applied for that; the region of Halton has applied to the federal government for permission to proceed with that. What we've seen in the US examples is that it substantially offloads the 911 emergency services capabilities and, through deployment of that, we are quite certain that in times of emergency we could make much better and effective use of our 911 services going forward.

So as a final recommendation that we'd like to respectfully offer the committee, we believe that companies such as Bell Canada have extensive experience with emergency response both in terms of technology and in resource management, and we would welcome the opportunity to participate in further working groups or committees to provide those insights and help marshal the initiative going forward. We believe that the cyber threat is as significant now as the voice threat and that we need to focus our attention in terms of how we secure, support and reinforce those networks and access to information. We believe the province can provide leadership with regard to funding models for municipal support programs, such as 311 programs and emergency alert programs such as in Sarnia, which will also support us in times of crisis. Finally, while the province has typically been reluctant to participate in the federal initiatives of the CRTC, we think there are very specific areas such as support of dial tone accessibility where it's not a competitive issue, and the province could do considerable value in terms of weighing the imperativeness of that with regard to emergency response and encouragement of the federal government to allocate funding from such funds as the deferral fund in support of those types of initiatives.

The Acting Chair: OK, that's a lot to digest. The first call is from MPP Zimmer.

Mr Zimmer: On page 23, the last point you made was that Ontario should perhaps get more involved with CRTC issues. Are other provinces involved more so than Ontario in CRTC issues?

Ms McDougald: We have had opportunities in other provinces where they have written letters of support in terms of applications we have made for allocation of funding. There are two ways the province can get involved, one which could be deemed to be favouring a

given competitor, whether it be the cable companies or the telephone companies, and we certainly don't want to put you in that position; but there are other ways that simply an articulation of your priorities in terms of allocation of funding would be valuable.

Mr Zimmer: What are some of the issues the other provinces have written to the CRTC on?

Ms McDougald: As an example, one of the things being lobbied heavily by a number of telephone companies, including ourselves, is allocation of funds for northern development in provinces. We had gone, actually, to the Ministry of Economic Development to ask for support for allocations, some of those funds, in Ontario to put broadband access in the north. We've not yet been successful in getting as much support as we'd like there, but that example, plus the emergency preparedness and funding would be—

Mr Zimmer: Which provinces are you—

Ms McDougald: I'm sorry, I can't off the top of my head tell you, but we could certainly reply.

Mr Zimmer: Could you give us that information?

Ms McDougald: Yes.

Mr Zimmer: I'd ask the clerk to follow up on that, about the provinces that are interacting with CRTC and on what issues.

Ms McDougald: Certainly.

Mr Zimmer: Thank you.

Ms Broten: Thank you for joining us today. The goal of this committee was to reach out at an early stage in our process as we're trying to develop where we are going to go as a province in terms of ensuring that we have the tools. Many of us can think to the fact that it was very important that that telephone was there, whether it was on 9/11 or the day of the blackout. The importance of communication was clear.

One of the things that other panels have raised, and in particular the private sector panel has discussed, was whether sufficient tools were in place for the government to call upon the private sector to partner, and whether that should remain voluntary or whether there should be some legislation in place to be able to say, "Bell Canada, we need access to this many lines because of the communications necessities of the provincial government, of the hospital, of whatever." So I want you to comment on that aspect of whether it should remain voluntary or whether there is room for a more entrenched and formalized process.

Ms McDougald: I'd offer that, I think without exception, we've been able to, with the demand of government, provide the services required in time of crisis. So we're very pleased with the track record of immediately being able to set up war rooms, task force centres and incremental access. So I'm not sure I would jump to the conclusion that legislated participation be required, though perhaps as a safety net it would be valuable. But I would not suggest that experience would dictate that that's mandatory.

Ms Broten: In terms of a process as to seeking out the advice of some of the private sector companies who have

had to do work in the various fields, we talked to the Canadian Bankers Association, for example, Enbridge and others in the private sector who also indicated a desire to participate and share what they've learned over the last number of unfortunate emergencies we've had in the province.

I wonder if you could give some insight into a process by which you think we could seek out that advice and whether any other provinces or, for example, the federal government as they've examined these issues have established a process that we might be able to look to.

Ms McDougald: We'd welcome a process of defined committees or a working task force with very clearly delineated participation. We did try, post the SARS arena, to engage with the respective stakeholder groups to provide the input that we had. We found it very difficult to understand where we could intersect and provide that input. So formally defined and announced working groups who are looked to specifically for input would be welcomed.

I defer to my colleague, Claude, though, to talk about the federal government—he works very specifically with the feds—and how they engage the private sector.

Mr Claude Elliott: There is an association called the Canadian Telecommunications Emergency Preparedness Association. Most phone companies are members of that and there is representation on that association by the government of Canada. That's represented by Industry Canada and by OCIPEP, which is now Public Safety and Emergency Preparedness Canada. So there is a process there. I'm not sure if the provinces are engaged in that or not, but certainly we would welcome that opportunity.

1600

Mr Zimmer: Just a follow-up question. We've heard what Bell's up to in this whole emergency preparedness thing. Can you comment on the level of co-operation between Bell and your competitors in the Canadian market, Telus and the other companies and so on? Do you have common approaches to these things?

Ms McDougald: Yes, we can. It's one of those situations where you're competitors until times of crisis, and then everyone steps up. I think you'll find an example in the tremendous forest fires that occurred in Vancouver. Bell was there to say, "How can we help? How many resources can we send? Do you need trucks? Do you need generators? What do you need?"

We similarly get calls from Telus and our other competitors at the same time when we have crises, certainly in the ice storm situation. While the competitive environment was not as extensive then, we had calls from power companies, from competitors and others to assist in support.

There's no formal hierarchy of contribution, if you will, in those types of situations, but there is repeated example of the call being immediate in both directions in order to provide support.

Mr Zimmer: Thank you.

The Acting Chair: I just have one request. I'm intrigued by the 311 pilot project in Sarnia, and I'm not

quite sure how we could help. You're referring to the CRTC application by Toronto and others, but I don't think we have time now to get into the details. What I'd like is a report to the committee—it doesn't have to be a long one—summarizing how the pilot project is proceeding in Sarnia, how it works, and how the province might be interested in examining this as a way of enhancing communications during an emergency situation. If you could just forward that to the committee, I would appreciate it.

Ms McDougald: We'd be very pleased to.

The Acting Chair: OK. On behalf of the committee, again, thanks so much for making yourself available. It was very informative and very thought-provoking. Certainly, we will follow up on some of those suggestions, I'm sure, to say the least. Thank you again.

JAMES YOUNG

The Acting Chair: The next presentation is from the Ministry of Community Safety and Correctional Services. I have to get this name—this ministry changes every year, it seems. It's Dr James Young, who's the Commissioner of Emergency Management. Dr Young is making a second appearance before this committee.

We appreciate, Dr Young, your making yourself available for the second time. We are at a different point in our steep learning curve since the first time you came. I hope we've all benefited by these three weeks of this crash course on emergencies.

Dr James Young: Thank you, Chair. I want to start my brief remarks by emphasizing that I'm, in fact, here representing my views rather than necessarily the ministry's views. I hope my comments will assist. I tried, last time, to lay out the framework of emergency management in Ontario and where we had come from and where we were, and then left the question of legislation as your area of study.

I'd like to now, at this point, now that you've been studying it, make some comments, if I may. The comments are based on my understanding of some of the issues that have arisen. So if I have not understood those correctly, I apologize in advance to the committee.

Mr Zimmer: On a point of order, Mr Chair: Just a clarification. I'm wondering if you could make it clear those areas where you're speaking personally and those areas where you might be speaking on behalf of the ministry. You said that your comments were not necessarily on behalf of the ministry but personally.

Dr Young: I have not vetted these comments or my opinions through the ministry or through the minister. In my independent role as an adviser to government, no one has seen my comments or had any role to play in what I'm going to say today.

Mr Zimmer: Thank you. I just wanted to be clear on that.

Dr Young: It seems to me that the theme of these hearings has been the responsible use of authority. Clear-

ly, as part of that, then, there is the need for an accountability framework.

The authority we're talking about is the authority we may need in order to save lives when other measures are unavailable or inadequate. The measures we're talking about are measures that we hope we never have to use. We believe, in fact, that if the acts are strengthened, they will in part allow us to not have to use them, because the very existence of them will make their use less likely.

The authorities we're talking about in this committee relate to defined emergencies and would not relate to everyday happenings in the province, even if they were going on at the same time. So the powers would relate specifically to the defined emergencies.

I know there has been discussion within the committee of adding to existing statutes. I believe that extraordinary circumstances demand extraordinary measures. I think that using existing legislation and improving it would help us avoid emergencies in some situations, but is not the way to go in regard to actual provincial emergencies. I'd like to give you, very briefly, six reasons why I do not believe this is the way to go.

The first is to look at the intent of existing powers. One of the purposes of special emergency powers is to ensure that there is general authority to cover all eventualities. The need for emergency powers presumes that there may be gaps in existing legislation. Existing legislation is not necessarily intended to address the catastrophic consequences of an emergency.

Provincial emergencies, by definition, are not, nor should they be, dealt with through statutes designed to address the state of normal. Even legislation designed to deal with serious occurrences such as environmental spills deals with situations that can be reasonably anticipated. Such legislation does not really address the catastrophic event that would call for a provincial emergency to be declared.

The second reason is that I believe it would be difficult, if not impossible, to cover all circumstances. Powers, although they may be very broad, exist currently in specific regulatory regimes and are therefore limited in accordance with that legislation. The Forest Fires Prevention Act, for example, includes a very broad power to require that assistance be rendered. The questions that you have to ask, though, are: Do such powers exist with respect to floods, earthquakes, other natural disasters or anything else that might come along? Do they exist with respect to emergencies that are not natural disasters? It would be a difficult exercise to canvass all existing legislation to fill all the gaps that exist.

As we learned in SARS, issues arose that could not reasonably have been predicted in advance, or even anticipated. Even with the most thorough review and consideration of existing authorities and legal frameworks, it is the nature of an emergency that no one can plan for all eventualities or anticipate all possible scenarios or individual issues that may arise. If you could, there would be no emergencies.

One example that comes to mind from SARS relates to international adoptions. We had issues concerning health and health protection in the province and had to establish some rules in regard to international adoptions. Could anyone have reasonably foreseen that adoptions were relevant to emergency management?

Further, if we wish to forgo general powers, we would have to fully satisfy ourselves that we had covered all gaps. The advantage of general powers is that we can be fully satisfied that most likely all possibilities have been covered.

The third reason for considering general powers rather than changing existing legislation is that powers in existing legislation may not go so far—in fact, it could be said that they likely would not go far enough to cover the emergency situation at hand.

1610

One of the scenarios that's been talked about is the entry upon private property to manage a flood. While there are various existing powers that may be relevant to that scenario, there are a number of questions that arise as well. Would existing powers of entry allow contractors, engineers and others to do the emergency remedial work? In an emergency, workers from other jurisdictions and neighbouring provinces might volunteer to assist or be requested to assist. Would existing powers authorize such workers? If some of the remedial work merely involved sandbagging, for example, regular citizens might be involved as part of that operation. Would existing entry powers authorize the entry of private citizens?

If we look at a major disaster, such as pandemics, and we look at conscripting people to work, the number of people and the range of people who might be involved in such conscription could be very broad. It's not hard to imagine in a pandemic situation that we may run into shortages of healthcare workers; first responders, whether they be ambulance, fire or police; manufacturing facilities might be vital if they manufactured, for example, gowns and gloves and masks that were necessary in the medical sector; and we might face problems in the funeral industry or in corrections or any other government agency. So trying to figure out in advance where those issues would arise is very difficult.

The fourth reason for looking at broad powers rather than changing specific legislation is a need for streamlining existing powers. We have some of the powers that are being discussed already in legislation. For example, we have the ability to establish facilities, to construct works and to procure goods. The problem is that, in order to do many of these things, under existing legislation we need to follow sets of rules that, in many cases, may be very onerous. Anyone that's been in government for any period of time knows what "procuring goods" means and the difficulty in doing it. We cannot follow, during an emergency, the normal practice of procuring goods; we need to go out and purchase quickly and, in essence, break the rules. In the case where we needed to build dams or other buildings, SARS hospitals or anything else, again, we may not have the luxury of environmental

studies and all the various rules of bidding etc that normally take place. So some of the powers you're considering are simply a way of streamlining existing things.

The fifth reason, I think, is that we should look to the example of other jurisdictions. All the jurisdictions I had brought forward in my previous appearance had special powers legislation. All of these jurisdictions would also have existing statutory regimes similar to Ontario. These probably include broad warrantless entry powers and order-making powers under a number of regulatory statutes, such as environmental protection. Despite these, all these jurisdictions have chosen to add broad powers in the case of an emergency as well, and I think this is for good reason.

The sixth and final reason—and the least important, but still a consideration—is that there are administrative efficiencies in doing it this way. The reasons under this that I would note would be a potential lack of coordination between existing agencies if there is no central authority. If we rely on existing powers, there can be various agencies issuing orders, each within their limited mandate and regulatory sphere. In a complicated emergency, this could create chaos, as the orders that are issued could be conflicting between one piece of legislation and another.

By having one act, it clarifies existing powers as well. In an emergency, existing powers could be applied in novel ways. Because of the novel circumstances existing in provincial emergencies, there may be ambiguity or a lack of clarity on how the existing powers would apply. Clarifying the powers available to emergency officials in advance would help them carry out their functions quickly and with assurance in an emergency.

The third and final reason under administrative efficiency is compliance or enforcement. An order under central emergency legislation would carry a lot of weight. The mere existence of such authority would likely result in greater compliance than reliance on either existing compliance or enforcement mechanisms.

I've handed out two sheets to the committee today, and what I'd like to do is give you some of my thoughts about the various powers you've been asked to consider, among others that have come up during the hearings, I'm sure.

I looked at it and asked, from my own experience—and these are only my own opinions—how would I rank these and consider what to do with these if I were in your shoes? I looked under three criteria: intrusiveness, need and timing. I ranked intrusiveness from "least intrusive" to "most intrusive," with one point for "least intrusive" and three points for "most intrusive." I looked at need in an emergency as "more likely," "somewhat likely" and "less likely," and awarded them one, two or three points, with "less likely" being three points. I looked at timing from the point of view that if an emergency were called, would there be time to recall the Legislature and add pieces to the legislation before the power was needed? I awarded "no time" one point and "there would likely be time" three points.

Having done that and plugged in those values from my own experience, I ended up with a list of powers in a ranked order. Interestingly enough, the most controversial of those, things like curfews and mandatory recruitment, fell to the bottom of the list with the highest number, but also fell in the timing area, where there "may be time" to do them. So it produced a list where, in my mind, the least contentious things were near the top, the more contentious things near the bottom and the issues that fell on both sides toward the middle. These are only my rankings, and this is only intended, in some small way, to assist the committee if I could.

Finally, just a single comment on the proposed legislation, which I saw this past week, after it was introduced to the committee: I looked at it and do not think that at the end of a period of time there should be a full sunsetting of an act and a reverting to what we have now. I think there should be a review process. Until a review is completed, whatever legislation is proposed by this committee and passed by the Legislature, ultimately, should be the legislation that stands until any new legislation replaces it in future.

With that, Chair, I am very pleased to answer questions.

The Acting Chair: Thank you, Dr Young. We'll start with Mr Zimmer and Ms Broten.

Mr Zimmer: So your sense is that there should be a central authority which this existing power should be tested or operated by, that that's the most efficacious way to manage an emergency crisis. Having said that, do you think the central authority should be on the senior public service side or on the senior political side?

Dr Young: I think the authority rests in both spheres for different reasons. The ultimate accountability in a democracy is to the elected officials. The policy decisions in an emergency should be made by the Premier and by cabinet, and by as broad a group within cabinet as is possible in the circumstances. My job in an emergency is to lead the technical and operational side and to bring forward those issues and bring forward good options, and then act on those. I bring to the table both my own and other people's technical expertise and experience. Our job is to implement that and operationalize that. So I think both parts are important, but the major policy issues and the major directions that a government takes are certainly the political decisions as well. Obviously, in a real crisis you act as quickly as you have to and you make the decisions that have to be made instantly, but then you go back and loop through and get approval.

1620

Mr Zimmer: I appreciate that that's the theory of the relationship. Have you given some thought to how that relationship between the senior civil service authority and the senior political authority would actually work in practice in the context of a rapidly developing emergency?

Dr Young: Yes, we have. We've in fact planned this and charted this out. The concept is that there's an operational side and a policy side which are separated from each other, with myself and others as the bridge between

those. The key on the operational side is to get information and to get decisions to them as quickly as possible on an ongoing basis and to ensure that they have those decisions so they can move. You solve as many problems as low down as you can, and then the problems that can't be solved gravitate up through a set of operational committees, assistant deputy minister and deputy minister, and then come to me to filter and bring forward as policy decisions to government. We would intend to operate with a committee of cabinet, then, who make those policy decisions, and I'm the conduit, along with the medical officer of health, on that committee, along with other senior civil servants who go to that committee and present these issues and then operationalize them afterwards.

Mr Zimmer: Thank you very much.

Ms Broten: In talking to other jurisdictions, I just wanted to pose to you, looking at Quebec—when we had an opportunity to speak to them yesterday, their structure appears to be that everything must be done within the line ministry before you can turn to the broad, sweeping Civil Protection Act. For example, in the context of a health emergency, the question we've heard day in and day out on this committee is, "Who was in charge? Who was in charge?" In talking to them, it appears that in the context of a health emergency, health is in charge, unless they've done everything they can do, and it is at that time that you turn to the emergency legislation. In fact, they indicated that there have been requests made in the province to turn to that broad, sweeping emergency legislation that the province has turned down and said, "No, you must do what you have within the powers of your legislation."

I raise that with you in the context that there's a view, or my own personal view is that we do need to look at the powers in other pieces of legislation. If we're looking at a structure like Quebec's, we need to make sure that Dr Basrur has what she needs. We've heard it is a problem that we don't have a chief veterinarian who has those powers. Would you disagree that we need to look at the powers that exist in the context that there is line ministry responsibility to deal with it at first hand?

Dr Young: No, not at all, and if I left that impression, I want to correct it. The aim of what you try to do, in fact, is to manage things short of declaring a provincial emergency. We did the ice storm as an example of that. In those instances, you would manage using existing legislation. It's very useful to have existing legislation bolstered that allows you to do that. We want existing legislation to assist us in managing, for example, avian flu etc. You use a provincial emergency when you need a massive amount of provincial assistance, you need emergency powers or you need to get public attention focused on something. Those are the instances when you declare a provincial emergency.

I don't want to leave the impression that you would manage even a health emergency only within the Ministry of Health. Once you deal with any issue, whether it's avian flu or health or anything else, and it gets out-

side of a certain size—you start out with a problem with public health in Toronto. Toronto would notify provincial public health that they had a problem with meningitis or an infectious disease. If that infectious disease spreads and becomes involved in three or four different health units, then the province becomes more active and more involved because the size of the problem is expanding and there's a need for continuity and the provincial medical officer of health has a larger role to play.

Somewhere, as that's transitioning, the Ministry of Health and the provincial medical officer of health start to involve my office as well, because what happens is that you very quickly get into issues that start to affect all the rest of government as well. An infectious disease element begins to affect, as we learned in SARS, occupational health and safety, so the Ministry of Labour has a major role to play. You get into problems in crowded places like jails, so you get into corrections issues. You get into problems about keeping schools open or closed, and you get into education issues. On and on the list goes, and pretty soon you get into economic consequences.

As I mentioned the last time, when we're dealing with avian flu, we've got about eight or 10 ministries at the table. An infection on a farm now in Ontario, even if we don't declare an emergency—when we managed it a few weeks ago when we had a false alarm, we had eight or 10 ministries and three levels of government at the table, all managing it before and preventing it from becoming an emergency. So it's not one ministry. We actually pour in all of government resources in a smaller way, but many of the ministries very early in a proactive way.

Ms Broten: Thank you.

The Acting Chair: MPP Kormos.

Mr Kormos: Thank you, Citizen Colle.

Thanks for coming back. This is an interesting and valuable analysis of these respective parts. I was really fascinated by the two civil servants from the Ministry of the Attorney General who came here—when was that, Mr Zimmer? A week ago? A week and change?—and told us about the bill they had drafted at the request of the Ministry of Community Safety, relayed to the Ministry of the Attorney General. This wasn't an exercise—I understand that sometimes policy people, if they have a slow period, will anticipate requests from their own bureaucracy and spend some time preparing contingency plans for their own boss. This wasn't the case; this wasn't self-initiated. It was a request from the Ministry of Community Safety over to the AG, down to these people. I was surprised to learn about it, and I don't want to speak for my Liberal counterparts, but I could read the looks of surprise and the “Oh, gosh” expressions on their faces when they learned about this bill.

The bill they showed us seems—I don't have it here; Mr Fenson may want to help us—to incorporate every one of the things, perhaps with the exception of one or two, that you put on this list that you've rated here, that you've prioritized today. Is that your understanding of it?

Dr Young: Could I make a comment about that? I want to be very clear: I had not seen the bill. I certainly

alluded very clearly, when I was asked questions, to the fact that there had been discussions taking place, and I remember members asking me specifically what some of the issues were that were being drawn out and what some of our thoughts were on that. Certainly, when I was referring to that, I was referring to the very discussions that are contained in what's before you now, but it was not at a stage where it had returned or I was aware of it. Certainly I wasn't aware at the time I was here that that was an issue. Had you asked me specifically if there was a bill being worked on, my answer would have been, “Yes, the Ministry of the Attorney General is working on one, but I haven't seen it at this point. We're having meetings,” and the discussions are exactly as I portrayed them. I don't want to leave any impression that I was attempting to mislead you or the committee in any way, shape or form.

Mr Kormos: No, and I do not want to suggest that in any way, shape or form.

Dr Young: But I think it's not a surprise that the things that are in that document are the things that I brought forward, because the basis of what we were discussing among the group was what was contained in other legislation, and that's the chart I brought you. Any similarity is because that's the basis of our discussion.

1630

Mr Kormos: I do want to get the time frame right. Did your letter to the Premier, with the chart attached, the appendix attached, predate your awareness of the Ministry of the Attorney General policy people drafting that bill?

Dr Young: The discussions about the need for change in legislation have been going on for some time in government, so that's a process that's been underway. As bureaucrats, we were discussing the accountability mechanisms and the need for legislation among ourselves since last year. So that's been an ongoing process. My letter to the Premier was because I felt very strongly that the process needs to move along and we need to have it debated and reach a decision so that if something happens, we have the tools at hand, whatever they may be.

Mr Kormos: As I told you the last time you were here, government staff and opposition member staff were bumping into each other as they were simultaneously leaking that letter to the press gallery upstairs. It's true. They were crossing each others' paths. They were rushing from media room to media room.

The other document we took a look at was the 1981 McMurtry white paper, wherein McMurtry, justice minister as he was then, considers the codification of powers. It doesn't enumerate those powers but, by and large, it's talking about some of the same things you're talking about. Then it goes on to conclude that not only should they not be codified, but it is preferable that the common law be maintained. Granted, that was in 1981. We've had experiences since then; that's one observation. Two, the charter has kicked into place—and Mr Zimmer can probably enlighten us on the impact of the charter—but I, for

the life of me, can't see it. Was McMurtry wrong in 1981 or is his conclusion no longer relevant now?

Dr Young: First of all, I have tremendous respect for the chief justice in all his various roles and have admired his whole career, so I would be loathe to disagree with the chief justice on anything. Actually, had I been sitting there—and I read the report so that I would be familiar with it, anticipating you might ask me. Had I in 1981 been writing that report, I think I would agree with the findings of the report at that time.

I believe that we're living in a very different time in 2004 than we were in 1981. I looked through the report, for example. That's an era when even then we weren't saying that we needed mandatory plans for municipalities. It's based on the Mississauga train derailment. There were no deaths, there were no injuries during that period of time. There's one vague mention in that report to terrorism. There is one mention that I could find but it's very much in passing. There is no discussion of global warming. We certainly, as I demonstrated with the chart I gave you last time, face aging infrastructure like we never have before. SARS was not even in our worst dreams at that point in time.

We are in a different communications age, in a much more instant age. None of us was saddled with BlackBerry's in those days, and some of the other things we have now. This report doesn't advocate strong recovery plans, which we now have and didn't have in place then. The report didn't suggest that, either. There were no mandatory training or exercises for either municipalities or provinces at that point in time.

It's a long answer, but I think the answer is this report served us well from 1981, but I would not endorse it if it was made—personally; this again is my personal view. I think we're in a different age in 2004.

Mr Kormos: And McMurtry may have agreed with you. I would dearly love to find out.

Dr Young: I hope so.

Mr Kormos: I know. But you see, having said what you did—you said the Mississauga train derailment. Come on. Hurricane Hazel, because that had been talked about. When was that—1957? We had already undergone two decades plus of hyper-planning—and we talked with Mr Collenette about that earlier today—around the risk of nuclear attack. So it's not as if we were oblivious to these catastrophic things. Granted, we didn't have the menu that we have now, but we weren't oblivious to it.

Dr Young: Well, we weren't oblivious to it, but I think the size, the scope and the regularity of them is very different now than it was before. I agree with you. Hurricane Hazel struck several countries, but virtually everything we can think of now, whether it's SARS, 9/11 or the Bali bombing, affected multiple nations all at the same time. The world we live in is much more complex. The management of these and public attitudes are very different. Things we believed and the way we behaved in 1981 is not the way the world works in 2004.

Mr Kormos: Thank you, sir.

Mrs Sandals: Thank you for coming back, Dr Young. One of the things that we seem to have heard about

consistently from the people who are the first responders, the front-line health care workers, particularly in the case of SARS, was that there seemed to be a fair amount of confusion around conflicting directives and who was in charge. What we've heard consistently from a variety of people is, "Let us know who's the boss." Thank you for discussing the political policy decision versus the implementation decisions that someone like yourself would be making.

But we've also had some conflicting advice around, when is it the chief medical officer of health? Should we have a chief veterinarian? Should it be yourself? There's this expressed need: "Tell us who is the boss." Is that something that we should be trying to codify in legislation, or is that something that is codified in your job description, essentially? Or is it something that should be played out on a crisis-by-crisis basis?

Dr Young: That's a very difficult issue, and that's why there isn't an easy answer. My own belief is that a structure needs to be put in place and agreed to, but it will be somewhat dependent by the time and by the people who are available at the time.

Let me explain what I mean. There is a need in an emergency for someone who is technically very good. Let's use an example of a health emergency, and I'm not referring to the current people in the role. But we could have a medical officer of health who is technically and medically very competent but very uncomfortable in the overall managing of an emergency situation. They're different skill sets.

In an emergency, as I've tried to illustrate to you, health is maybe a central issue, but it's a long way from being the only issue. There's a huge big picture, and that's what emergency management is: putting all of that together. So you have to have both. You have to have good technical advice and good technical leadership in the area—that's very important—but you have to have overall management and overall direction and coordination.

The way I believe it should work, then—and it did. The directives, of course, were confusing in SARS because there was no textbook to go to and we were doing it on a day-by-day basis. So the criticism is valid in that we were trying to protect people and do the right things, but we were doing it in a medical vacuum. So I accept the criticism, but faced with it again, it would still be a difficult thing to do.

But the reality was that on the technical side of it, there was virtual unanimity among all of us as to what to do and how to do it. Then there's the question of putting it all together and connecting it all. So in a medical emergency, if we had a repeat of SARS, the Ministry of Health would be managing and putting together the expert committee and working on the medical issues. I would certainly be there and be part of that and have input into that. There are all the other pieces that have to be considered, too, as we learned in SARS, and have to be managed, and that's not Sheela's responsibility to look at that. I would be bringing that stuff to the table and be

concerned with that as well, and the overall pieces. Then we marry that at the cabinet table.

1640

The managing of it is two skill sets, and it's true: There's the highly technical area that you're most concerned about, but there's the overall management and putting it together, and that's my role. It happens that I'm a doctor and I understand the medical stuff, and that's why I say that could change. You could have somebody who is completely foreign to the area and doesn't understand any of it, but somebody still has to put the overall management together.

The problem with enshrining things in legislation is that none of us are going to be at this forever and it would change over time, depending on the strengths of the people available in the province. So I'd worry about enshrining. I'd make sure that somebody is thinking about, for now, what are we going to do, and always looking at that. To my mind, that's the most important way of doing it, and I think we've been doing that. Certainly we've been having those discussions in government.

Mrs Sandals: I noticed in the legislation, which MAG had drafted as contingency legislation—and they probably were thinking about individuals because, as you've just pointed out, they seem to have drafted it so it's sunsetted. So this is probably a compliment to you. But they did have a clause in that allowed the Premier or cabinet, as the case may be, to delegate some of those emergency powers specifically to the person with your title. Should there be some facility within the legislation to delegate emergency powers to a lower level, even if we don't codify to whom that is done?

Dr Young: Yes, I believe there should be. Again, you're on the line between policy and operational, but what you're doing is talking about these extraordinary powers, so you want to have accountability and you want to have very tight controls on them. But in practical terms, if, for example, the basic policy decision was made to order an evacuation, once that policy decision is made and it has to be operationalized, I don't want to have to wake up the Premier all night long to ask him whether Mrs Smith can be evacuated versus Mr Jones. I want to have the ability to operationally manage that, and I believe that's the direction that's being taken in the attempt by the Attorney General to recognize the operational need to make these things work and the recognition that something could happen in the middle of the night and a decision has to be made instantly. I believe there's provision to allow someone in my position to effect something and then go and get approval afterwards because it was so urgent that it be done that it had to be done first. I think that has to be there as well.

Mrs Sandals: This was a decision at the political level, obviously, but the example we heard this morning from Mr Collenette was that if the planes are in the air over the Atlantic Ocean, somebody has a couple of minutes to figure out where they're going to land.

Dr Young: Yes. You very often don't have a long time and you just simply have to do something. It's a

sensible thing and you know it'll probably be all right afterwards, but it's nice if it's legislated first and then you have a process of going back and accounting for it after.

Mr Arthurs: Dr Young, just a few things. When you began, you made reference to provincial emergencies as being a catastrophic event and you identified some of the kinds of things that the general powers would allow for that otherwise wouldn't be available, everything from access to property to the whole warrant issue, evacuation, as has been referenced now, the conscription of people, the acquisition of goods and those kinds of things—the centralization of authority.

There have been a number of incidents that have been identified and that we've talked about here over the past few weeks—these have occurred over a period of time, everything from the 9/11 situation to the blackout—which one might consider to be of a province-wide impact and potentially catastrophic and which, in my view, might require the application of provincial powers, potentially of the nature we're talking about.

SARS is maybe somewhere in the middle, whether it got to that scale within the context of it being isolated for the most part within the GTA and didn't spread—

Dr Young: That's why we made it a provincial emergency, so that would happen. That was good management. That's why it was a provincial emergency, so it didn't get out in the rest of the province.

Mr Arthurs: And that was a good thing. Municipal emergencies, whether the Peterborough flood, even the Mississauga train derailment in the past—I wouldn't see those as being of a scale that would warrant the application of provincial emergency status if these general powers were being put into effect. Certainly a nuclear event, to me, and that's obvious from my past history, there isn't too much question about making—

Dr Young: That already is. A nuclear event is already a provincial emergency if it reaches a certain point.

Mr Arthurs: But the nature of the powers within that would be, for me, far more obvious than some of the others. I have a greater comfort level in discussion if there's clarity on the scale of the catastrophe, that we isolate from the legislation municipally declared emergencies and provincially declared emergencies in any legislation that might consider the powers we're talking about in this deliberation, that it's very clear that the level of the emergency was at such a scale that it allowed these extraordinary powers to be brought into play. Is that in essence, in part, the kind of thing you—

Dr Young: Yes.

Mr Arthurs: As I say, when you came in today, I kind of thought you had the guns blazing at first.

Dr Young: No. I very much see this as a size that is a provincial emergency. I'm not advocating these powers at a municipal level in a municipal emergency. I think if there's a municipal emergency that is getting large enough, it could be a localized provincial emergency but you would look at it and look at what goods and services and expertise you have to bring to bear. Very often we're

able, as we were in Peterborough, to go to Peterborough and provide expertise and provide financial assistance and do all the things we needed to do without escalating that municipal emergency into a provincial emergency. It didn't change anything we would have done.

Mr Arthurs: To have the capacity to ramp it up at that point in time.

Dr Young: That's right.

Mr Arthurs: There very well could be, I would think, a provincial emergency that, in and of itself, might not require the application of these extraordinary powers. Quite frankly, there could be a provincial emergency where legislation could be in place that wouldn't even be in use for a provincial emergency.

Dr Young: I would hope that in most provincial emergencies you would never need the legislation, that you wouldn't use the extraordinary powers. You only use them in extraordinary circumstances and when you have to use them. The calling of an emergency, in my mind, is very different from—you don't call it just because you need the powers; you call it because the issue is big enough that it needs the resources and the attention of the province and the attention of the public. One of the features might be the use of extraordinary powers or authority.

But the key also is that if you have these abilities, very often then, you can find ways and compromises and settlements short of even having to use them. If somebody then says, in an evacuation situation, "Can it be ordered?," and you can say yes, then that's different from saying, "Well, no, it actually can't be." Now you're into a negotiation, into a fight and into a problem.

Mr Arthurs: Could the application, the inclusion in legislation of these extraordinary powers, be in distinct legislation?

Dr Young: I would recommend against it. I think when you separate it out, you're making it—it makes more sense to me that it's part and parcel of an emergency, and I don't think it's an accident that it sits within other acts as well and not as a separate and distinct thing. If you start putting it outside and putting it separately, then you're saying, "We've got about five levels of emergencies," and I think it's very confusing.

If we start and we have a provincial emergency and then on the third day I need an extraordinary power, we announce we've bumped it up and we're using an extraordinary power, and two days later I say, "We've still got an emergency, but we've bumped it down one level of emergency," what you get is the weariness and the problems the United States is having with the coding system: What does it mean and how do you manage and do I not have to pay attention now because the extraordinary powers are out? I think it just becomes potentially a management issue in running the emergency, because you've got so many levels that people are going to be arguing with you, "Well, yesterday I had to follow your direction; today I don't." So I think there are issues around it.

1650

Mr Arthurs: I want to be clear: The authorization for the application of legislation, to be able to initiate activity, does that rest with the political body or whomever?

Dr Young: Yes. I think in my reading of it, unless it was some extraordinary thing happening that didn't allow time to even get any political OK, then you would do it and go and get approval. In every emergency, no matter what you do, the calling of an emergency or the use of powers, you have to understand that there's a slow way and a medium way and then there's the time that you can't follow any of those rules and you have to do it quickly. In essence, yes, it's a political decision to use the powers.

Mr Arthurs: But my concern is not whether the capacity to begin a process of responding—because I think that should be a fairly natural reaction within emergency management, provincially or locally, as the case might be. The ability to actually declare an emergency is the point I'm driving at.

Dr Young: Currently it's the Premier, and ideally it would be a cabinet committee. But there would be circumstances where you either didn't have time or you physically couldn't get a cabinet committee together.

We were very lucky during the power blackout. We got a number of ministers very quickly, and they happened to be present when the Premier declared the emergency. There could be other circumstances where that's not possible. Ideally, it would be a group of cabinet that would make the decision.

Mr Arthurs: It would be a group or be an individual in that sense. OK. Thank you. That's helpful.

The Acting Chair: MPP Broten.

Ms Broten: I just wanted to pick up on something that Mr Arthurs was talking about. We've heard some of the individuals who have made deputations before the committee talk about scalable powers, that we might consider scalable powers. In your response to Mr Arthurs's question, I'm getting the impression that you are opposed to scalable powers. I wanted to get confirmation on your views on that and an explanation, if you are opposed, just some clarity as to why that is.

Dr Young: I think the more you do scales and the more you do these things and the more complicated you make it, you risk, first of all, it not being practical when you need it; you make it unduly complicated and rule-bound. It may not work for what you need. I think you need adequate and proper accountabilities in all of these things. But the nature of emergencies is, as I said in my remarks—if I could predict all of the things, we wouldn't need emergency legislation because we wouldn't have emergencies. Everything you couldn't think of is what happens during an emergency. So it always worries me if you get too many rules and too many scales, and it's very confusing to the public. That's my worry. It's an extraordinary time, and you need to act. The aim of the whole exercise is to save lives. You're going to do what you need to do to save lives at a point like that, and somebody

has to lead. The guiding principle is, "We're here to save lives."

Ms Broten: That's what we heard from the experience in Quebec, that the sole purpose of their legislation, which is viewed to be turned to in extraordinary times, is to save lives. They indicated to us that in fact since 2001—I think I'm right—they've never turned to that legislation. I think it's important in the context of our discussions to acknowledge that some provinces that have had these powers in place have never turned to them, have never used them.

Dr Young: Yes, and we've only had two provincial emergencies in the history of Ontario. They both happened last year. So you're right, you're absolutely right: You could have the powers and never need them. I couldn't be more serious when I say that even if we have them, my fondest hope is that we never use them, and I mean that.

Ms Broten: I just have one last question with respect to accountability mechanisms. There are various forms of accountability. Certainly, again the Quebec legislation is fresh off the top of my mind. If a minister makes a decision, the calling to account is just 48 hours back to cabinet; if it's the Premier of the province, it's seven days or something back to the Legislature—various mechanisms in place. Do you have any opinions as to the accountability mechanisms and the time frames from your perspective?

Dr Young: As you've gathered, I have opinions on most things, so I do on that as well. Again, I think it's practical. I firmly believe there must be accountability and that's the way you have to operate, but I also think you have to be careful that you don't trip over your accountability. In the middle of an emergency, there is an awful lot going on and there are a lot of ends, so if your accountability time frames are either too rigid or too short, you're going to stop what you're doing and lose focus on what you're doing just so you can go back and account. Then you're going to be accounting for why you lost your focus and why people died because you were busy producing a report to go to a Legislature or somewhere else. So I think the accountability has to be at a point in time when you have the ability and the luxury to do it and do it well and to stop and consider it. It should be on an ongoing basis but it shouldn't be so tight that it interferes with the actual management of the emergency.

Ms Broten: I guess, similarly, it shouldn't be such a long period of time that any discussion of what happened and the accountability is moot. You could certainly put the time frame so far away that it doesn't really matter at that point because we're months and months past the incident.

Dr Young: Absolutely. But I would also say that you don't want it inadvertently to turn into a political discussion rather than a public safety discussion in that there are risks if it's too close. There's a balance there between all of these things. I understand them and there is no magic. Unfortunately, it would depend on the type of emergency and how long you're engaged in it. I would

have been quite happy in the power blackout—you know, two weeks after we're in pretty good shape and we can start to account for it. In SARS, after two weeks we were still at the height of it, and being accountable two weeks into it would have been a very major burden.

The other thing, from a personal point of view, is that after you're over it, for the people who are involved in it, there's a certain level of fatigue that sets in at that point and you'll get a better accounting a little bit later, when you've had a couple of days off once in a while.

The problem with accountability—and I don't know the solution; I can't give you the answer—is that it does vary to some extent. If it's an ongoing process and an ongoing emergency like SARS, the accountability needs to be further out; if it's a shorter thing, then the accountability can be sooner. So there's no absolutely right answer, in my view.

Mr Zimmer: We heard this afternoon the California model, where they said they try to manage state emergencies if at all possible at the local level: the local political level or the local geographical level. Do you see that sort of model in Ontario and, if that was the Ontario model, when would the central authority, that is, the Queen's Park authority here, intervene or override or get involved in what Mr Arthurs was concerned about, a very local municipal emergency?

Dr Young: The practical way you manage an emergency is that you manage as much of it as far down the string and as locally as possible. Even if we look at whether it's SARS or whether it's a terrorism incident or any sort of thing, a lot of the actual management of it is taking place on the ground at the place—or the floods in Peterborough. When an event overwhelms a community or when the event gets bigger than the powers of the community, then it becomes a provincial concern as well. So in the case of SARS, for example, the hospital system, which it actually most affected, is really a provincial responsibility, not a local responsibility. In my view, then, it became a provincial problem because we needed to effect change in the hospital system and do it quickly. Metro Toronto doesn't have that authority and doesn't have any jurisdiction there. There are obviously areas where there's provincial expertise. In a terrorist act, for example, all of the death investigation, expertise and authority is at the provincial level. It's neither at municipal or federal.

1700

Certain things can only be done at certain levels of government statutorily, so you sort of balance all of that in. But what you try to do, irrespective of where it's running, is run it with all levels of government at the table together, and you run it in an integrated fashion, and you do as much as you can at ground level. In SARS, we brought Toronto and York and Durham public health units into the mix, and they sat at the table, as did the federal government, while we were making the decisions. So you bring people together and you try to form a team and build a consensus as much as you can.

We went to Peterborough to assist. We certainly didn't try to take over. We tried to complement, and then we

offered financial assistance and we offered technical expertise. The Ministry of Health got a nursing home open in a hurry, and we did all kinds of things that only the province could do. We got the hydro turned on quickly, which only we had the ability to do. So we broke the bottlenecks where we had control.

Mr Zimmer: In the California model, if I understood it properly, the request for the central state government to get involved comes from the bottom up. That is, the local area calls Sacramento and says, "Help," but Sacramento waits until the local jurisdiction calls. Is that the model here?

Dr Young: I think we're a little more hands-on here, perhaps. We tend to be monitoring a little more and watching a little more. We're very likely to go through the door and say, "Can we help?" and, "We are here." When you get into different jurisdictions, you get into different splits and who does what. So I think different models work, but we would be much more inclined here to be a little more proactive and be there and a little more active a little sooner.

Mr Zimmer: If you met some resistance from a local political jurisdiction, who would have the hammer?

Dr Young: Well, it depends on the situation and on what someone needed. I think it really would depend on the nature of it. Even when there's resistance, generally, if you move it up the line—my own experience is that, if we have a discussion with the mayor in a little more detail and move it a little higher, there's an agreement on what to do and people move forward in the public's best interest. I think almost anything's solvable, and you rarely have to resort to who's in charge or power plays.

Mr Zimmer: But in the last analysis, if push comes to shove?

Dr Young: If it was large enough and the province believed that public safety was an issue, then the province would take over, but I don't envision a situation, and certainly haven't come anywhere near a situation, like that in this province. I think the level of co-operation between police, fire, ambulance, civic officials, emergency officials, provincial officials—what we're working on is building those relationships.

The Acting Chair: Another question, Mrs Sandals?

Mrs Sandals: Yes, just a quick follow-up. In the discussion you were just having with Ms Broten around accountability, if I was understanding you correctly, where you were talking about the sort of accountability after the fact, you were referring to the requirement to report back to the Legislature as opposed to, if you were hypothetically exercising an emergency power, having a very short-term report back to cabinet for confirmation, which would be reasonable.

Dr Young: That's not an issue because what ends up happening is, as happened in, for example, the hydro blackout, I was seeing cabinet once or twice a day anyway. So it's not a problem.

Mrs Sandals: Yes, I just wanted that clarified, that there's one level of accountability, which is the order, and the other is the report.

Dr Young: At the height of an emergency, cabinet's your new best friend. That's right.

The Acting Chair: I just have a couple of questions, Dr Young. In the deputation made by the superintendent of the OPP, Maurice Pilon, he was quite emphatic in saying that we don't need any more powers, that the existing power structure is more than adequate.

Dr Young: Yes, and that's in regard to policing in what they do day by day, I believe. I think within the realm of what police do and how they do it, I have no problem; they've learned to operate and they do what they do. The problem is that most of what we're looking at are much broader things and much broader issues; for example, the right of entry or the right to trespass for workers doing sandbagging along a river, which is different from police entering in other circumstances. I don't take any issue with what he says specific to what he does and their experiences. I've got the broader view because I've got the larger management issues, not just the policing issues.

The Acting Chair: I guess what it gives rise to is the delicate balance that you have to have in legislation to ensure that existing powers, where they may be adequate, are maintained at that level and only triggered if the issue of policing all of a sudden has to dovetail into the issue of health safety in a SARS-like situation.

Dr Young: I agree that we should be looking eventually, or now or whatever, at all the existing legislation to see whether or not there are things that could be added to give us the necessary tools to prevent things from becoming an emergency. That's a different issue than when you have a full-blown provincial emergency and you may need very different and broader powers. I wouldn't want to see anything that takes away from what we currently have that allows us to operate day by day. In fact, if we can strengthen it, we'll decrease the number of times we have to call a provincial emergency, we'll manage events better on a day-by-day basis and we'll be able to lessen the effect of anything that does happen.

The Acting Chair: One other issue that comes up by cynics is, "Well, this is not a matter of powers or legislation; it's a matter of resources, resources, resources." How do you respond to that?

Dr Young: Would police and emergency management—everyone—like more resources? Of course. I can tell you all kinds of places where I'd like more resources. That's a different issue: where to put the resources and how much. But no matter how much resource you have dedicated to things, the nature of an emergency is that it's a bigger issue than you have resources. So you can't have enough resources in an emergency. In the middle of 9/11, as big as New York City was, everybody had to pile in and assist as well. As big as Toronto public health is, we needed provincial help and federal help and help from experts from other jurisdictions to assist us. We needed experts as well. You can't put enough resources—it's a separate question, in my mind. You couldn't build anything big enough to withstand every possible thing and be

ready and never have to call an emergency. I think we'd be turning over 100% of our income to taxes.

The Acting Chair: The final question I have is that you have been directly involved in the front lines of the two provincial emergencies: SARS and the blackout. As one intricately involved, seeing how things work, don't work, how our legislative apparatus meets the need or doesn't meet the need, what are you saying to this committee in a very concise way that you would like to see corrected, if anything?

Dr Young: Hopefully what I've said is that we have a lot of work to do in a number of areas. I think we are working in those areas, including the regulation and plans and training. Specifically, this legislative committee was then asked to look at whether or not we have the legislative tools in an emergency. It's my considered opinion that I can think of many instances where our efforts would be hampered by the lack of specific authority within the existing legislation. I believe there are ways of building proper accountability into it and, recognizing that other jurisdictions have it, putting safeguards in place and ensuring that it's exercised by the right people that make it safe, because the goal of it is to save lives. I would find it very frustrating to try to manage something

and not be able to do something that would result in saving lives. I think we all would find the post-mortem rather difficult to handle if we knew that we had weaknesses—and we do; I've seen them directly.

The Acting Chair: So before we go into our next provincial emergency—and hopefully we won't—we need to give you or others like you the tools to better deal with those emergencies to protect the public interest?

Dr Young: I would appreciate it. I think this has been a very positive process and I think it's important that you heard the risks and the benefits both, but I would certainly ask for greater authority in certain situations—very well defined—in order to be able to protect people in another emergency.

The Acting Chair: On behalf of the committee, I would like to thank you, Dr Young, for being here and making yourself available for our questions and comments. We again thank you for helping us through this challenging process that we're going through.

Dr Young: Thank you very much.

The Acting Chair: The committee now stands adjourned forever—no, no, till September 7.

The committee adjourned at 1711.

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CONTENTS

Thursday 26 August 2004

Emergency Management Statutes Review	JP-269
Registered Nurses Association of Ontario	JP-269
Ms Doris Grinspun	
Chicken Farmers of Ontario.....	JP-274
Mr William Bearss	
Mr Chris Vanderkooy	
Honourable David Collenette.....	JP-278
Ontario Association of Fire Chiefs	JP-290
Mr Rob Browning	
Ministry of Transportation	JP-294
Mr Malcolm MacLean	
California Office of Homeland Security	JP-299
Mr David Zocchetti	
Canadian Centre for Emergency Preparedness.....	JP-305
Mr Adrian Gordon	
Bell Canada.....	JP-308
Ms Kelly McDougald	
Mr Claude Elliott	
Dr James Young	JP-313
Subcommittee report	JP-286



JP-13

JP-13

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Wednesday 13 October 2004

Journal des débats (Hansard)

Mercredi 13 octobre 2004

**Standing committee on
justice policy**

**Comité permanent
de la justice**

**Emergency Management
Statutes Review**

**Examen des lois ontariennes
sur les mesures d'urgence**

Chair: David Oraziotti
Clerk: Katch Koch

Président : David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 13 October 2004

Mercredi 13 octobre 2004

*The committee met at 0905 in room 151.*EMERGENCY MANAGEMENT
STATUTES REVIEW

POLICE ASSOCIATION OF ONTARIO

The Acting Chair (Mr Mike Colle): I call the standing committee on justice policy to order. Just to inform people again, we're undertaking a review of the emergency management statutes in Ontario for the purposes of updating and improving emergency management processes for the province. We've been meeting over the summer and we are going to continue today and tomorrow with more deputations. We're going to start today with Bruce Miller, who is the chief administrative officer for the Police Association of Ontario.

Mr Miller, the way we are conducting these hearings is that in the first part you're free to give as much of a written presentation as you'd like and then leave time for questions or comments by the members. We have approximately a half-hour at your disposal to do with what you wish. Thank you very much in advance for coming today.

Mr Bruce Miller: Thank you, Mr Chair. Did the firefighters sleep in? Because the police were on time. I've always wanted to say that on the record.

The Acting Chair: No, there are horrendous traffic problems all around here. There's construction wherever you look. Like someone said to me this morning, "The road to success is always under construction."

Mr Peter Kormos (Niagara Centre): I want the record to show that I didn't laugh in response to that and I'm not endorsing it.

Mr David Zimmer (Willowdale): I just spent about 10 minutes at the intersection of Bloor and Avenue Road.

Mr Kormos: Next time, turn the car off.

The Acting Chair: Go ahead, Mr Miller.

Mr Miller: My name, as you mentioned, is Bruce Miller, and I am the chief administrative officer for the Police Association of Ontario. I was also a front-line officer for over 20 years with the London Police Service.

The Police Association of Ontario, or PAO, is a professional organization representing over 21,000 police and civilian members from 63 police associations across the province. The PAO is committed to promoting the

interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services.

The PAO is a progressive and innovative leader on policing issues in Ontario, and we've included further information on our organization in our brief.

We appreciate the invitation to address the standing committee on the adequacy of Ontario's emergency management statutes and would like to thank all the members for their continuing efforts for safer communities.

We believe we have an excellent history of response in this province due to the professionalism and dedication of emergency responders and our history of working together for safe communities.

Our board of directors, in consultation with our membership, took a number of steps to prepare for our appearance today. We reviewed the existing statutes, including the pertinent sections of the Police Services Act. We have also reviewed our members' response and involvement in such incidents as the 2003 power blackout, SARS, the eastern Ontario ice storm and issues that arose out of the terrorist attacks on the World Trade Center. We also examined our response and involvement in localized emergencies such as floods and tornadoes. Finally, we reviewed the presentations that have been made to you.

The PAO believes that the current legislation and common law provisions are sufficient to deal with emergency situations. We support the importance of planning for identifiable threats both locally and provincially, but recognize it is impossible to plan for all emergency situations.

We do, however, believe that certain steps need to be taken with this important issue. It should be noted that we will be addressing this matter solely from the perspective of front-line police personnel and will not attempt to speak on behalf of all emergency responders. The police will play a key role in any emergency situation and will play a lead role in many, if not the majority, of situations. The key to adequate and effective policing has always been staffing, training and equipment. We would like to address those three areas as they pertain to emergency management.

0910

Adequate staffing levels are key to day-to-day community safety. Many, if not all, police services are hard-

pressed to answer daily calls for service let alone large-scale emergency situations. We agree with the government's statement that we need more police officers to keep our communities safe. We understand fiscal realities but believe that safe communities are a priority for the citizens we serve. We would urge the government to make the 1,000 new officers a priority. We believe that at the very least the new officers could be phased in to lessen the financial impact. All three provincial parties have identified the need for additional front-line officers, so we will not dwell on this issue. We strongly support the government's commitment to put 1,000 new police officers on Ontario's streets during their current mandate.

Training is an obvious component of emergency management. We looked at this area to prepare our submissions. The results underscore the value of this committee's review. We were very surprised to discover that the Ontario Police College does not offer any training whatsoever in emergency management. The Ontario Police College is one of the finest facilities in North America and should be a leader in this field. We strongly believe that funding should be put in place to ensure the necessary training in this area. We also believe that the college should take a lead role in coordinating training with the other emergency services due to the expertise of its staff and the excellence of its facilities.

Finally, we have been advised that the cost for senior-level courses at the college may as much as triple next year. Many services will be reluctant to pursue training due to budgetary concerns. Training in this important area must be legislatively mandated to ensure compliance.

Our third and final area is equipment. I think many, if not most of us, tend to think of the need for very elaborate equipment to deal with emergencies. Certainly, there is a need for this type of equipment, but we would like to highlight one important and neglected area. In November 2000 the then Ministry of the Solicitor General issued a communicable disease policing standard. This standard or guideline was developed by the policing stakeholders, ministry staff and other experts in the field. The standard, which is copied for your information, also contained a ministry-designated equipment list. Many services were quick to follow the guideline. Unfortunately, many other police services were not.

Our members have been actively involved in responding to many suspected incidents of bioterrorism since the attacks on September 11. The vast majority of these calls were anthrax-related. Front-line police personnel were also actively involved in the SARS crisis, and many officers were quarantined as a result.

The ministry circulated bulletins on both anthrax and SARS, advising the policing community that the disposable masks and disposable suits contained in the designated equipment list were adequate equipment to prevent them from exposure. Unfortunately, many police services had failed to provide this inexpensive equipment. Both the mask and the suit, which an officer might only need once in a career, cost less than \$10 each. However, both items could save his or her life.

Our members responded to the calls whether they had the equipment or not. However, we believe this equipment needs to be in place and should be legislated, as are many of the other standards, to ensure compliance in officer safety across the province.

In closing, we'd like to thank the members of the committee for the opportunity to appear here today. We believe that there is great value in this type of review. The PAO would be more than willing to provide our input into any draft legislation the committee might recommend. We greatly appreciate your interest in community safety and would be pleased to answer any questions you may have.

The Acting Chair: Thank you very much, Mr Miller. If we could start with the official opposition: Mr Dunlop.

Mr Garfield Dunlop (Simcoe North): Thanks very much, Bruce, for coming forward today. We're at the tail end of this process as we head toward possible legislation.

I'm curious about your comments about the training and the police college. Can you elaborate a little bit more on that? Specifically, could you refer to any costs that may be associated with that and in particular what you would like to see in that training program?

Mr Miller: I think everybody recognizes that training is an important component of emergency management. There are so many issues to consider, and this committee has been dealing with that. A lot of police services may not have been through a major emergency situation. There is no training program for emergency management right now. We contacted the college last week and spoke to the director and were very surprised to learn that there is no training. I think the college sees great value in it. It's something that should be looked at to ensure that the training is in place. It's not necessarily for all officers. It should start at the supervisory level and work its way down. The college could also take a lead role in coordinating training for the other emergency services as well, because police, fire and paramedics work so closely together.

Mr Dunlop: So you're suggesting that each police service send X number of people to Aylmer, starting immediately? Is that what you're saying?

Mr Miller: That's right. When you run into these situations, there are always so many issues with equipment and communications that are often inadvertently overlooked because the training and expertise aren't in place. We see that as a big step forward, especially if it can be coordinated with the other emergency services.

Mr Dunlop: You're suggesting, then, that draft legislation should include the mandatory use of equipment, plus training programs?

Mr Miller: That's right. Emergency training can be included by regulation in the Police Services Act. It has been included in other areas before.

Mr Kormos: Thank you, sir, for your submission. The theme of the need for ongoing training, persistent training, is a recurrent one in many of the submissions made here. You talk about the need for training but you

also make reference to the cost of training. I come from Niagara and we've got one of the larger police forces in the province, but like every other municipality, we have a chief of police who has to fight tooth and nail with the police services board around budget and is constantly being called upon to trim budget proposals. Policing is labour-intensive; that's the long and short of it. If you want good police forces, you want to have a good complement of police officers, especially in smaller-town Ontario.

Later this morning we're going to hear from the chief from Moose Factory, from the Moose Cree First Nation. I know some of these folks had occasion to do the Bisson mini-tour of the far north, visiting places like Attawapiskat. That's not necessarily within the realm of your jurisdiction, because these are our native police services. But good grief, in remote and northern Ontario the level of staffing and then equipment and training is abysmal compared to the worst possible scenario you could point out in more urban southern Ontario—one, because of the availability of training and, two, because of the cost.

Are you proposing, if the province is serious about emergency readiness, that it invest some money in supporting police services getting the adequate level of training for their police officers?

Mr Miller: There's no question that we've always supported funding for training. Of course, there are other ways to lessen the cost as well. Certainly, working with the college can be done—video training, things like that. But you need a certain level of mandated training.

Just then, when you mentioned Moose Factory, we also represent the Ontario Provincial Police. It has detachments in Moosonee that I also visited about two years ago. We are spread out across the province, and there are certainly different needs with different services.

0920

Mr Kormos: I'm interested in your statement that, "The PAO believes that the current legislation and common-law provisions are sufficient to deal with emergency situations," because that is one of the divides, if you will, that this committee may not acknowledge having but seems to be underlying, and that's basically the McMurtry position that the PAO seems to adopt. Yet at the same time you say, "We'll be pleased to assist in the preparation"—and I'm sure you will; your involvement would be more than welcome—"of any legislation that might be drafted." So having said, as you did, that you believe the current legislation and common-law provisions are sufficient, what would you contemplate participating in by way of assistance in terms of legislation that might be drafted?

Mr Miller: Two points: First of all, we may have missed something when we reviewed these areas. That's very possible as well. Also, there is an opportunity to legislate or regulate some of the ideas we've suggested in terms of training. We reviewed some of the police submissions. The majority of the groups, as we saw it, seemed to feel the common law provisions and current legislation were adequate, in their view. There seems to

be some argument over how far common law extends, but in our view, everything seemed to be sufficient.

Mr Kormos: I guess part of what concerns me is the 1,000 new police officers—some newspaper columnists are predicting that to be among one of the next set of promises to be broken; the cost and even the strain, as some commentators have put it, on Aylmer police college with the 1,000 new police officers. So I have some concern about whether that promise is going to be kept, just like those astute commentators. But if you had your druthers, where do you think the province should start? Should we be focusing on legislation or should we start by picking up and improving the level of training across the board? If you had one priority, where would the priority be? Obviously not restricted to those two choices; you may have half a dozen other alternatives or options.

Mr Miller: I think the priorities have to go together. You need the staffing and you need the training. Great steps could be made with coordinated training for the emergency services run out of the Ontario Police College. That would be a big bonus in the end run for all Ontarians, to ensure that their emergency services are properly trained and coordinated so that these issues aren't dealt with when the tragedy or disaster occurs but are taken care of ahead of time.

Mr Kormos: My concern about training as a stand-alone—I've got a firefighting service down in Niagara-Pelham. These guys are doing lotteries and bake sales to buy a thermal imaging machine, which is how you search for people in a smoke-filled burning building. All the training in the world in terms of using that sort of technology means zip if, in this case, that firefighting service doesn't have the equipment. I presume the same could be said about police officers in terms of training them to do things they're not going to be able to because they don't have the tools to do it. So I suppose it's dangerous to take any one of these things as a stand-alone. You have to look at it from a more integrated perspective. That means, at the end of the day investment, cash, money. Is that fair?

Mr Miller: It always comes down to dollars at some point.

Mr Kormos: Thank you kindly. We'll be rotating, I presume, as topics develop.

The Acting Chair: Yes.

Mr Zimmer: When there's a crisis in a small town in Ontario that has a local municipal police force, two or three police officers, and it obviously requires a larger police force, how does a smaller police force go about integrating or hooking up with a larger entity? Are there any problems that you're aware of there and, if so, how do you think they could be fixed?

Mr Miller: We've never seen any problems at all. There certainly are mutual aid provisions. The OPP, by legislation, also by the Police Services Act, is mandated to render assistance in these types of situations. Certainly, police services have a history of working very well together. I've never seen any issues. Fires in

northern Ontario, the eastern Ontario ice storm: It's quite regular that other services will send additional personnel down.

Mr Zimmer: Just to follow up, when you get into these situations, who has the ultimate authority in a local disaster; that is, how do the local municipal police force and the larger entity coordinate or integrate the command structures?

Mr Miller: By the letter of the law, I couldn't tell you who would have absolute authority. I believe it would be the local chief, but we haven't run into those sorts of situations. When the OPP or another municipal service has come in, they've always worked together very co-operatively. It would be the local chief of police, as I understand it, but—

Mr Zimmer: But it's not clear?

Mr Miller: —it's a non-issue. It may be clear. It would be something I'd have to research to be positive.

Mr Zimmer: Would you like it to be clear?

Mr Miller: It certainly hasn't been an issue for the province in dealing with these situations, that I'm aware of.

Mr Zimmer: Thank you.

Mrs Liz Sandals (Guelph-Wellington): Thank you for coming this morning, Bruce. Just a quick question first. I'm assuming that any of the amendments that you explicitly suggested in fact would be amendments to the PSA as opposed to emergency management.

Mr Miller: That's correct.

Mrs Sandals: So that would not be specifically amending the Emergency Management Act.

Can we think a bit about what the role of the police might be in an emergency which doesn't relate to some criminal act or potential criminal act? I'm thinking of something like SARS, something like the ice storm, those sorts of emergencies. What has the role of police forces been during those sorts of emergencies?

Mr Miller: Certainly in terms of ice storms and disasters of that nature, a lot of times the police—although everybody works together co-operatively—tend to take the lead role because in many situations the local emergency management communications centre is built in conjunction with the local police service. In terms of SARS, it was more of a backup role in providing security at hospitals and also responding to calls for assistance.

Mrs Sandals: In something like an ice storm or perhaps a major explosion, would you be involved in evacuation issues, travel management, those sorts of issues?

Mr Miller: There's always evacuation, security, traffic control. I know there was some discussion about mandatory evacuation. Things of that nature are certainly problematic to enforce, just with sheer numbers. I don't think you could ever put enough police personnel or emergency people on the street to be able to enforce a mandatory evacuation order. I think that would be very difficult.

Mrs Sandals: This is certainly an area the committee has looked at, the whole area of when there is a need to

evacuate an emergency area, perhaps because of a flood or some sort of other natural disaster. Obviously you've been looking at the record. There's been a bit of debate, in the case of evacuation, if there's a need to enter a home to check whether there's an elderly person there or a family, or children need to be evacuated, whether the common law provides the authority for police to enter.

While I'm certainly not a lawyer, looking at the cases the researchers have brought to us around the common law provisions, authorization to enter without warrant seemed to be related to some sort of suspicion of criminal activity. Clearly, in an evacuation situation, criminal activity has absolutely nothing to do with it, which then raises the question, in a non-criminal situation, where it's simply a need for emergency evacuation, would it be helpful for front-line police officers to know that they do have the authority to enter to assist people who may need assistance, as opposed to some sort of apprehension of criminal activity? Is that an issue that has come up for front-line police officers?

0930

Mr Miller: If this committee recommends it and puts forward draft legislation, we would take it to our council for some input. But in many of these situations, common sense prevails too, in terms of common law provisions and just from experience.

I remember, when London was devastated by a tornado back in 1982 and many houses were badly damaged or destroyed, common sense did prevail and officers entered homes to check for people. It hasn't been an issue over the years.

Mrs Sandals: So nobody challenged your right, although it was perhaps unclear whether or not you had the right. Is that fair to say?

Mr Miller: We've always gone under the common law provisions. Could that be challenged down the road? I suppose the way everything is going, there's a good chance it could be and would be.

Mrs Sandals: Just society becoming more litigious.

Mr Miller: It hasn't been a problem up until now.

Mrs Sandals: The other area we've discussed is prohibiting travel either out of an area or into an area, looking again at either natural disasters or health-related issues. Would it be helpful to know that you had the legal authority to prevent people from either leaving an area or entering an area? This isn't about closing a road for traffic safety reasons; this is simply managing the flow of people in and out of an area because of an emergency situation.

Mr Miller: I suppose it could be helpful, but in actual fact, whether that law is in place or not, we're always going to have officers in emergency situations doing traffic control and security, either keeping people out or not letting people out. Certainly keeping people out is something we've done a great many times over the years.

Mrs Sandals: Does the current law actually provide you with the authority to do that in the absence of criminal activity, or is this something where it would be helpful to have the law clarified?

Mr Miller: It's something that certainly hasn't been an issue, that hasn't been challenged.

Mrs Sandals: Thank you.

Mr Dunlop: Just a quick question to Mr Miller. Stated on the second-last page of your comments is the possibility that the police college may triple their rates next year.

Mr Miller: We've been advised that the police college will now start charging actual costs. There will be no supplementary funding for courses. It's our information, although the final prices aren't out, that the senior-level courses at the Ontario Police College will as much as triple next year, and certainly that causes us concern.

Mr Dunlop: You've been advised as the association? Do you know if all police services have been notified of this?

Mr Miller: All police services and our association were notified that full cost recovery will take place at the Ontario Police College starting next year for all senior-level courses. The fees for the recruit class have been raised from \$5,000 to \$7,500 effective January 1, but there will be full cost recovery and we're advised that will be about a tripling for all courses at the college.

Mr Kormos: We've got, it seems to me, some concerns, not inappropriate, around what the powers of police are or, quite frankly, the powers of any citizen in the context of, let's say, entering a house. People like Mr Zimmer and Ms Broten are probably far more capable of telling us the law in these regards, but it seems to me that for something to be a criminal offence—now forgive me if I'm wrong, to any of you—there has to be criminal intent. You see, when I enter your house, I'm not *prima facie* committing an offence unless I'm entering your house, breaking into it with the intent to commit an indictable offence, as I recall that particular section of the Criminal Code. So it's worrisome, and I'm not purporting to tell people what the state of things is, to suggest that police officers don't have the right—I mean, “right” is a strange word in this context—or the ability—because “ability” is more proper than “right”—to do something without fear of repercussions.

It seems to me that a police officer or any citizen, any person, would not subject himself or herself to criminal prosecution or any other sort of action were they to do something in bona fide good faith—“bona fide”; I suppose it's redundant—entering into somebody's home to rescue somebody. Nobody's going to get charged with break-and-enter or a criminal offence if you smash down somebody's door to rescue a person drowning in the bathtub or a person who's had a heart attack on the basement floor at the bottom of the stairs.

I know there has been work done already in this regard, and I'm wondering if there is an ability on the part of research, without writing the text on, let's say, Criminal Law 101 all over again, to give the committee a little bit more of a definitive answer, a little better, clearer perspective on this whole business of rights and powers versus abilities, things people can do, be they police officers or non-police officers, without fear of repercussions.

I'm inclined to agree with the Police Association of Ontario. I can't think of a cop who's going to worry about whether or not they're going to find themselves in trouble—or firefighters. I mean, these are people who, as we know, rush into danger when other people are running away from it. I can't think of a single one who's going to bother himself or herself with that sort of thought process when they're doing what they do on a daily basis.

I just wish we would have a more—because I appreciate the question that's being asked. I'm not of that school that believes we need the warrantless entry power, because I believe there's an entry power that's there, that's historic, because that which is not prohibited is permitted. I don't know whether that's a valid axiom or not. I'm just a little worried that we might get caught up in this fear, in this concern, without clear and definitive advice from legislative research in terms of the status of laws. My understanding is more akin with Mr Miller's than it is with the sense that police or firefighters or anybody else are constrained from doing certain things. I wanted to raise that.

Look, the message we're getting is pretty darned clear from the police association, representing police officers across this province, and I believe they do, and that is that the bottom line is, we need more training. We need money to do it. We need the resources to give effect to it. We've got to perhaps be creative. Reference is made to using videotapes, but I suppose pure training is one of the things that can be developed. That means you have to first train the trainers in their respective police services. I quite frankly am far more interested in pursuing that than getting caught up in powers, rights versus abilities. That's why I appreciate legislative research giving us the definitive answer, something that is beyond debate, that is so clear and absolute that one couldn't possibly quibble with it.

Thank you.

Mr Zimmer: That's the longest question I've ever heard.

Mr Kormos: It was a comment. You ain't heard nothing if you want a long one.

0940

Mr Miller: One thing I'd just caution the committee about—certainly, I'm not a lawyer, but I know that sometimes when we legislate in one specific area, to say you can do it in this situation, sometimes it implies that you can't do it in other situations.

So if we had the power to enter buildings just in emergency situations, we also enter buildings when we get a call about somebody not having seen their neighbour for a couple of days and the newspapers are starting to pile up outside. When we arrive, if we can't get into the house with a key from the neighbour, our members are going to have to force their way in. But I wouldn't want to see us legislate those powers in one area and solve that problem, but then it causes us problems in other areas because we don't have the legislative protection there, because it would be quite routine for us to enter people's homes in situations like that.

Mr Kormos: If you recall the McMurtry report, it's exactly what he warned about. Be careful about legislating certain powers, and there's a Latinism that covers that, which Mr Zimmer knows and I forgot a long time ago. Once you state certain specific, explicit powers, there's a presumption to be made about things that are not contained in that specific direction, possibly to the detriment of a police officer's ability to do those things that he or she could have done otherwise. Mr Zimmer may want to speak to that. He can at least tell us what the Latinism is.

Mr Zimmer: I'll leave you to struggle with it.

Mr Kormos: I'm not going to even try to remember. It's been a long time, Mr Zimmer.

The Acting Chair: Just a couple of comments and a question, Mr Miller. As you know, the committee is not looking at emergencies per se. We're looking at the extraordinary, unprecedented emergencies. We're looking at worst-case potential scenarios.

As you know, one of the things that was the determinant conclusion of the 9/11 commission is that the lawmakers, emergency planners never looked outside the box. They never said, "What if?" They weren't imaginative or creative enough, if you want to use that term. So that's what we're charged with. We're not looking at your everyday emergency; we're looking at beyond SARS, beyond the blackout.

Whether it's McMurtry or others, they weren't there in that situation, and I'd be very interested in hearing from former Minister Clement about what it's like to deal with the SARS situation, building, as they said, the boat in the middle of a storm in the ocean. So that's what we're looking at. So it's not everyday emergencies. We're looking at a declared provincial emergency. We've only had two declared in Ontario's history.

I guess the thing that this committee is concerned about is that we were given quite a list of enumerated emergency powers across Canada. I don't know if it concerns you, but it certainly concerns, I think, myself. If you look at the list of powers of jurisdictions across Canada and North America in these emergencies—we've talked to people in California and in New York—essentially, we have huge gaps here in Ontario. If you look down the list, whether it be regulating or prohibiting travel, evacuation, mandatory recruitment, establishing emergency facilities, constructing work etc, we have none of these powers in our statutes here in Ontario. So Dr James Young basically said, "Here are the gaps, and when you consider legislation, look at the gaps."

I guess the question I have to you is, as an association, you don't have any problems with us looking at the best way of filling those gaps so that we can deal with these extraordinary situations that may never occur again, or may occur 50 years from now?

Mr Miller: No. We support this review 100%. I think one thing that jumps out when you mention looking outside the box—it's something we hadn't done. We were really surprised when we saw there was no training for police personnel in this field, because I know there's

certainly a lot more for firefighter personnel. So that's an important first step.

When we see the committee's recommendations come out—we really look forward to having a look at the legislation. All I can say is, from a practical standpoint—and personally, I've only been involved in one emergency situation, and that was a tornado in London—speaking for our members, things have worked pretty well. I know there was some talk about problems with collective agreements and things of that nature. It's never been an issue in our field, because things like that have been waived and met. Management and the associations have worked together in the best interests of the front-line people and the communities.

A lot of these things have worked well in Ontario. That's not to say that that's always going to be the case and there will not be a need for this legislation. It is a problem, and I'd urge you to check with council. If you legislate in one particular area about having powers, does that curtail you in other areas? If we have the power to go in and check homes in an emergency situation—and I realize, when we use "emergency" today, we're talking about a major disaster of some scope and magnitude. My question for council would be, would that limit our powers, where we've gone in before by common law to check on the welfare of a person who hasn't been seen for several days, where we need to get in? I just wouldn't want to see that hurt.

The Acting Chair: Yes, and I think we're going to have that. That will be very valuable information; I totally agree.

The other question I have is, one of the emergency responders from emergency services who was here at one of our roundtables mentioned that one of the concerns they had is about first responders, whether they be fire, police or EMS, having a problem sometimes with being notified of the existence of an infectious disease. In other words, if you're transporting or have to move that individual, should you have the right to know or should you be alerted about the fact that that person could have some contagious or infectious disease?

I've had front-line officers who transport prisoners from the Don Jail to the Metro West Detention Centre mention to me that right now, the way the privacy laws exist, you don't have a right to be told that you are carrying someone with HIV, perhaps, or in contact with a person with HIV. The comment made here at this committee was that there should be some notification provision for first responders in terms of the fact that they might be putting themselves in danger and to take extraordinary precautions when they're transporting someone who may have some kind of contagious, infectious disease. I wonder if you'd comment on that.

Mr Miller: Certainly our members deal with people with infectious diseases on a daily basis. In terms of transportation, our transportation is usually limited to planned transportation: to court facilities, detention facilities, things like that. We usually have that information; the facility will pass it on out of common sense.

We're always dealing with people in day-to-day situations. I just don't know how you could legislate that area. When I show up at your home or somebody else's for a call, we usually find out only afterwards, if we're lucky, that this person might have had a disease.

I'm not exactly sure it would be that big an issue for the policing field; certainly more for paramedics and people transporting people. But most of our transportation is planned.

The Acting Chair: Dr Low, who spoke before this committee, was talking about the same thing on a different scale, about the access to information from hospitals, from data collection, especially in the area of health, whether they had the right to that information to deal with the emergency. I guess that's part of the bigger problem. It comes right down to: Eventually someone has to implement that strategy on the ground, and at what point does privacy have to take into consideration the public safety interest and those providing public safety? Those were the sort of intriguing questions posed to us.

Mr Miller: Certainly we've had that ongoing debate with Bill 105, the blood samples act. The bill was a private member's bill by Mr Dunlop that I think only two members of the Legislature voted against; it had wide support. But unfortunately, when the regulations came in, the bill was badly hurt. We're going into consultations in about 10 days to try to improve the bill. It's a big issue when our members are exposed to diseases and can't find out whether that individual has a disease. It's not just exposure in terms of being airborne; we deal with a lot of blood contamination, being spit at, being bitten. These are things that we face all the time.

0950

The Acting Chair: That's exactly the same type of thing that this committee is grappling with, which is really on a much larger scale—an unprecedented emergency. We're trying to say, how do you deal with that? It's something that we're trying to look at legally and also in terms of the rights of privacy, etc. So Bill 105 is a great illustration. I appreciate that reference. We're looking forward to seeing what happens with your consultation.

Anyway, on behalf of the committee, I want to thank you for a very thought-provoking presentation. Hopefully, you'll continue to be in contact with the committee, as we will with you, in terms of our process of dealing with this legislation on emergency preparedness.

Mr Miller: Thank you very much.

Mrs Sandals: Mr Chair, could we just confirm that leg research will try and find some sort of comment on the question which Mr Miller has raised, which is, if you put a positive authority to enter without warrant one place, is that then implicit that you don't have it at other places because you've explicitly put it at one place? I think it would be very helpful to the committee to get some sort of feedback on that issue, because that's quite an important issue, that in looking at the management of provincial emergencies, we don't want to encumber the management of day-to-day emergencies. So it would be helpful to have some feedback on that.

The Acting Chair: I think that direction has been given to research. We will get that information back and we'll make sure you get a copy of that too. Thank you, Mrs Sandals.

TONY CLEMENT

The Acting Chair: The next presenter is the former Minister of Health and Long-Term Care of the province of Ontario, the honourable Tony Clement. Tony, can I call you that?

Mr Tony Clement: No longer honourable.

The Acting Chair: Before you get started, thank you very much for taking time and interest to help this committee in this very important deliberation, because we're certainly looking forward to your first-hand accounts on the reality of dealing with an extraordinary emergency, as you dealt with in those extraordinary times and, if I may say, I think in an extraordinary way. I compliment you on the way you dealt with that as the Minister of Health. That's why we were very anxious to hear your deputation today. It'd be very helpful to the committee. Again, a deep appreciation for taking time out to be here.

Mr Clement: Thank you very much, Chair. I appreciate your interest in my views on the matter. I took the opportunity to peruse some of the previous deputations over the past few weeks to this committee. I wanted to compliment the committee on its work to date, because even in the discussion I just heard this morning, you get a sense of how enormous the potential is to get things wrong if there is not the right kind of preparedness involved. The amount of spade work that you're doing now, I think, will stand the province in good stead in the future.

What I propose to do, Chair, if this meets with your approval, is that I do have some prepared remarks, and I'd be happy to engage in discussion afterwards.

The Acting Chair: That's fine. Go ahead.

Mr Clement: The unfortunate thing is that we've got a lot to learn from, both here in Ontario and elsewhere. That's the bad news. No one ever wants to talk about emergencies. In a sense, we had a period of time, as I think Dr Young mentioned to this committee earlier, when we had a lull in emergency situations. We had a little vacation, which is surprising, given the size and the complexity of this province. Then, all of a sudden, we had a perfect storm of emergencies, if I can use that language, all of them on top of one another, but also very different in the nature of the scope of the threats. So we had the ice storm, then the terrorism threat, then the pandemic possibilities of SARS, and then the blackout. Now Ontario can boast a wealth of experiences from which to learn. We would not, of course, be joyful that we find ourselves in this situation but, as the adage goes, we can make lemonade out of the lemons and learn our part from the province's experiences.

I wish to confine my remarks to the SARS emergency, although when I was in the role of Minister of Health and Long-Term Care, I was involved in the province's

response to the 9/11 terrorist attacks and the power blackout of August 2003. The SARS outbreak was a signal moment, though, in which all levels of government and every provider of health care faced a common enemy and the need to co-operate and collaborate. Unlike, for instance, a power outage, SARS represented a new and an unknown threat, which goes to your remarks earlier this morning, sir, where it's not planning for the knowable but planning for the unknowable that is perhaps the challenge.

We should recall that, at the time of the spread of the SARS virus, we did not know how it was spread, the length of time of incubation and how deadly the disease could be. The health system was required to respond to something already spreading in our hospitals and doctors' offices, yet so new that it didn't really have a name or many identifiable characteristics when we first learned of the virus.

Given this start to the emergency, I agree with those who have concluded that the health system did well, given the challenges outlined, and the truly heroic efforts of those involved cannot be minimized. Once the emergency was declared, the first time such a move was instituted in Ontario, within hours, the provincial operation centre was up and running and a chain of command was established.

Essentially, there was a three-pronged leadership command that reported to the Premier and decided all major questions. The Commissioner of Public Health, Dr D'Cunha, the Commissioner of Public Safety, Dr Young, and myself as the health minister essentially became inseparable, and our staff fused together to become one organizational unit.

Some have questioned the structure, and it did have its moments of tension, as one would expect, given the circumstances, but I have to say that it worked well overall for three reasons: First, each one of us had complementary roles and skills, which made us more wise, I'd have to say, and knowledgeable than any one of us would have been separately; second, we combined the roles of officials and politicians well, about which I'll say more soon; and third, the troika set-up made sure that most communications were focused and non-contradictory, thereby giving the public coherent and complete messages.

My experiences with this set-up lead me to conclude that it would be difficult to replace it with a single, all-knowing "leader" for the next crisis. In any crisis, you need a combination of skills, experiences and backgrounds. Furthermore, I strongly believe that the leadership must always include an elected official in the mix, similar to the role that I played in SARS.

As part of the troika, I signed off on every SARS directive drafted by Drs Young and D'Cunha, and I also participated in any major media conferences or daily messages to the public. I believe this to be critically important, because the public has a right to expect public accountability by the politicians they elect. If the leadership in a crisis does not include elected officials, the

public quite rightly would ask whether they are shying away from their responsibilities in a time of crisis.

Including political leadership does not politicize the emergency. I would argue that it actually has the opposite impact. By acknowledging up front that the public has a right to hold politicians accountable in times of crisis, we create a signal to the elected officials that we expect that all decisions will conform to the best interests of the public. Any partisanship will be instantly detectable, and the politician will be correctly held accountable for not putting public health above political gain.

In the case of SARS, it meant that, at the height of the emergency, I and my federal counterpart were at pains to work together, even as we disagreed over the need to have better procedures at our borders and airports to prevent community spread. It also meant that I refused to declare the end of SARS at the end of the first outbreak, despite media and public pressure to do so, simply because, in my judgment, this would not have been in the public health interest.

1000

Another lesson for the future is that all planning and legislation must be flexible, lest you end up fighting the last battle. The next pandemic or public health crisis will have elements of similarity with the SARS outbreak, but also many differences. The response structure must be flexible enough to meet any new situation. That is why any emergency legislation must be broad to include powers of evacuation, cordoning off, price stabilization, resource control and so on.

Chair, as you were mentioning earlier, there's a tension, naturally, with this recommendation. From a civil libertarian perspective, this list or whatever list we come up with to fill the gaps—as you so rightly suggested—will appear quite long and indeed quite concerning. Therefore, the lesson to be learned is not to make the list shorter; the lesson is that there must be political accountability and transparency as the necessary counterweight to these powers being exercised in an emergency situation.

Let me give you an example or two. Any orders of evacuation should be countenanced or sanctioned by an order in council unless the emergency is sufficiently proximate as to render that impossible, in which case a ministerial order would do. In SARS, there were times when information was so scarce and the spread of the disease so rapid that I sympathize with the need to move quickly. Nonetheless, various means of communication are available now that make it possible to have rapid response and political accountability at the same time.

Finally, SARS showed the need for consistency in directives. There is some talk in this committee's deputations that next time, individual health providers, be they hospitals or doctors, should make their own decisions in infection control and disease management. I believe this to be a significant mistake, sacrificing the ability to react to a public health danger for the sake of a marginal ability to decide closer to the case.

In my view, this suggestion would create the mirage of better judgment, but in fact a public health emergency

requires the ability of the best minds to consider and react to a challenge, which means the sharing of information and a response which can also be shared throughout the jurisdiction. For instance, when there had been a problem with mask-fitting by nurses, the issue had to be reviewed by experts on a province-wide basis so that every nurse had the benefit of the best safety advice.

This same argument holds for the need for province-wide directives, such as in the case of SARS, in a future health emergency. If there was a problem with the directives, it boiled down to making too many decisions in too little time with no margin for error. In other words, the problem was with the nature of the crisis, not with the proposed solution. Better communications and give-and-take, if possible and necessary, would solve 90% of the problems, in my view.

Ultimately, this committee's mandate involves, as I've said, planning for the unplannable. In other words, the next public health crisis will have some dimensions and aspects of which we are currently unaware. Having said that, we need to learn from our past experiences and be even more prepared for the next time. Part of the wisdom is to learn the right lessons, in that we change the things that need to be changed but also keep the things that helped tame SARS.

I hope my presentation, by focusing in on some of those things that need to be kept as well as the things that need to be changed, assists in separating the wheat from the chaff for the committee.

I thank you for the opportunity, and I welcome any questions.

The Acting Chair: Thank you very much. Mr Zimmer?

Mr Zimmer: Before Mr Kormos stepped out, he alluded to a theme that has been running through these hearings for the last few weeks, and that's two views, one represented in a report prepared by, as he then was, Solicitor General McMurtry in 1981, reviewing some of the Ontario emergency measures situations after the train derailment out in the west end. His 1981 report essentially said that there's enough authority sprinkled around in the common law and various statutes here and there. His recommendation was that emergency measures did not require any further codification or structural review, that it could be handled on an ad hoc basis, relying on the common law and whatever was on the statute books at the time.

The other view that has developed over the last few weeks is that that's not a sufficient system to respond to a crisis, that we need more codification, more structure, more formality; a plan, if you will. In your remarks this morning, you've stressed things like the need for flexible structure. You've talked about the success of your informal troika, as you referred to it. You've talked about the difficulty in planning for the unplannable. A very general question, then: Given your experience, do you think that the system we set up to respond to an emergency in Ontario should lean toward the formal or toward the informal structure?

Mr Clement: Thank you for the question, Mr Zimmer. I would agree with Dr Young that there is a need to fill some gaps. Here's how it worked in SARS, and then you can judge whether this is what you would like officials and politicians to do in a similar situation. In SARS, when we declared the state of emergency, none of us around the table had any experience in declaring a state of emergency before. The minute we did so, there were certain things that happened immediately, such as the activation of the provincial operations centre. In the relationship of the leadership of tackling the crisis, Dr Young joined Dr D'Cunha and me because of his emergency management role.

When we declared the emergency, it wasn't necessarily clear all of the things that we wanted or expected to be done, given the powers that we thought were available to us, so in a sense we were deciding on the powers that we wished to invoke as the situation unfolded. There were times when there would be an interjection by the legal branch, let's say, of the Ministry of Health, saying, "We're not quite sure whether, under the current legislation, you have the power to do what you just did or what you are proposing to do." My view, and I'm prepared to be judged by history on this, was to do whatever had to be done to protect the public and, if someone had to take a fall later by overstretching by overstepping a boundary, I was prepared politically to take that fall. To me, the ultimate litmus test and the judgment would be how we can best protect the public from an unknowable disease at that moment, where we did not know how it was being carried from person to person and we did not know the mortality rates. There were a lot of things we didn't know at the start of this outbreak, which became evident a bit later, but not at the time.

So when it came to deciding how to quarantine people, how to enforce the quarantine, when we were discussing evacuation procedures, when we were discussing at one point cordoning off Pearson airport, and we had a discussion, I recall—perhaps a very dramatic discussion—where someone said, "The airport is not under the authority of the Ontario government; it's under the authority of the federal government," my response was, "OK, how do we close all the roads leading to the airport? If the federal government doesn't participate in this, we'll just cordon off the airport so that they still have control over their airport, but we have control over all the ingress and egress."

1010

I guess what I'm telling you is we always felt we had to do what was to protect the public interest and to protect the public good. Some of that was a little bit messy because it was not clear from the emergency powers what powers were specifically outlined and what powers were not outlined. We ultimately decided that we would do what we had to do, and we would be accountable for any slip-ups along the way after the crisis had passed. If that's an acceptable way for you to expect public officials to react, then you don't have to codify, you don't have to fill all the gaps, and to a great extent,

it's impossible to fill all the gaps because, as I said, there will always be something in the next crisis that will be different from previous crises.

I guess what I'm leaning toward is the view that it is better to at least try to fill some of the gaps, because you don't want a situation where the decision-makers are second-guessing themselves as to whether they have the right power and authority or whether they don't. Again, as long as those decisions are made with the right accountability and the right transparency, that is the public safeguard, that the decisions are made in the public interest and with the right balance between civil liberties and public safety.

Mr Zimmer: Just a follow-up question, then. So your view is to have a system with flexibility and codification, or spelling out some of the key authorities. Which of the key authorities would you spell out and which authorities would you leave on the informal, ad hoc side?

Mr Clement: Based on my remarks and, again, following up on what Dr Young said to this committee earlier, I would make it more explicit what powers of evacuation, what powers of price controls and resource controls are available to the decision-makers. I think that those are some considerable grey areas, so you can fill those gaps. But I would also stress that you are allowing for considerable judgment for the leadership management of the next crisis to respond to the particular circumstances of the next crisis. For instance, if it's a public health crisis, you're going to want to craft legislation that says that the public health officials, on the direction of the government—again, I always stress that there has to be political accountability—are also given such powers and authorities necessary to protect the public health of the community. That's going to be necessarily a broad thing to suggest, but it is going to be necessary because you're not going to be able to think ahead as to what is going to be necessary. As long as there is transparency and accountability when and after those decisions are made, that's a reasonable balance to be struck.

Ms Laurel C. Broten (Etobicoke-Lakeshore): I want to talk for a moment about some issues that we've heard in which it wasn't that clear whom the directives were coming from. I wonder if you can comment on some of the confusion that arises at times of delegation. Clearly, you, Dr Young and Dr D'Cunha were not on the front lines in every hospital, and we've heard some concerns with respect to these extensive powers and how they end up working through the system in terms of authority and direction which get delegated to others to act upon.

Mr Clement: Yes, in terms of the role and responsibility, clearly once the emergency was declared, the Premier officially, by order in council, delegated to me, as the minister responsible for overseeing the SARS outbreak. So, to me, there was a clear line of authority from the Premier, who is the only person who can propose and declare a state of emergency, to the Minister of Health and Long-Term Care. Because there was an emergency state and because it was a public health emer-

gency, that's where Drs Young and D'Cunha became part of this troika.

In terms of the derivation of power, to me, I would say that it was crystal clear who had power and authority: It was Drs Young and D'Cunha and myself, both officially or from a regulatory point of view or a declaratory point of view, and from the point of view of the relationship between us and the providers of health care.

We pumped out a lot of directives in a very short period of time. In fact, the first drafts of the directives were under the pen of Dr Young in about four hours. We went from zero directives to about 30 or 40 pages of directives in four hours. Then what occurred was, once the directives were sent out to the hospitals to at least get some modicum of infection control in the place where SARS seemed to be incubating, there became a constant discussion between the hospitals and the doctors and eventually the nurses on the application of the directives.

Someone would contact our provincial operations centre or our science committee and say, "This directive is not working very well, and here's the reason why." Then there would be another directive that would come out to amend the directive. On one level it became a steady stream of directives, and some people found it a tad confusing, but on the other level we were trying to respond to what was going on in the field and saying, "Hey, you thought this directive was going to work this way, but in fact it's better if it works this way." "Gosh, that's a good point, so we'll go and change the directive."

I don't know how you get around that. On one level, it would be great to have all of the directives in an emergency perfect the first time through, but that's never going to happen. You're going to want to have a mechanism by which the people on the front lines have some input and can react and say, "You know what? This directive is not working well."

At the end of the day, we ended up with a whole pile. The directives were probably this big—a foot high, rather than three inches high—by the end of the outbreak. If we'd had time to consolidate the directives, it would probably end up being about five inches high, but because we kept amending the amendment to the sub-amendment, it got to be quite large. Ideally, you'd consolidate them and continue to make them as precise as possible, but we were doing it based on the new information that was constantly flowing about the nature of SARS and how to deal with it.

I guess what I'm saying in a nutshell is, it's hard to think of a situation where you wouldn't want to have the input that made the directives change, knowing full well that that's going to make it a little bit more confusing than if the first directives were perfect in the first instance, which is what you hope for but what reality sometimes eludes.

Ms Broten: I just want to pick up on the issue of political accountability. The statements you've made are pretty consistent with those we heard from David Collenette, who was in a very similar circumstance to you. He also expressed that it was not always clear that

they had the authority to do what was being done, but it needed to be done, so you did it and you made the decision that you would be accountable for those actions.

I wonder if you can comment on the role that the Legislative Assembly as an entity can play in that accountability. From the federal side, amendments have been made for reporting back to the Legislature in a more formalized manner and there's accountability during question period and other things, but if you can comment on a more formalized structure of accountability to the Legislature.

Mr Clement: I think there are a number of mechanisms that are already in place but could be improved upon. For instance, the commissioner of public health now has a direct reporting role as part of her responsibilities not only to report to the minister but, as I understand it, there's more of a public accountability role there, which I think is germane and positive. Similarly, if the commissioner of public safety could also have that kind of role, I think that is a positive step.

I would also suggest to you that we can learn from other jurisdictions. In the United States, when dealing with security threats, there is always an opportunity for members of Congress on select committees, whether it be the armed services committee or other committees of Congress, to be sworn in and to receive critical information on an as-necessary and a real-time basis.

We tried to do that during SARS. I don't know whether that has been commented upon. The two health critics at the time were Shelley Martel and Sandra Pupatello. At the start of the SARS outbreaks we actually did arrange for a briefing of those two individuals. I believe it happened one or two times in addition, so that they were always up to speed as to what was going on.

1020

That was an informal decision made by the minister. There was no procedure, but it just seemed like the right thing to do and consistent with what I did in other examples, such as the West Nile virus and some other cases where we had these briefings of opposition critics.

If you can formalize that or have a committee structure such that individuals could be sworn in and could also be aware of an emerging situation similar to what they do in the United States, I think that could very easily be grafted upon our emergency management. In fact, as I said, it's very easy to do. With today's communications, unless you have a complete meltdown of your communications infrastructure, you can always keep any number of people informed on a real-time basis. It really is not an issue now, whereas 20, 30 years ago perhaps it would have been.

Mrs Sandals: Thank you for your testimony. It's been fascinating. I too notice the parallel with Mr Collenette's testimony dealing with ministers who've been there and the interplay between professional advice and political accountability and keeping track of that.

I'm wondering specifically, because you were involved with a public health emergency, how you would see powers being divvied up between the Emergency

Management Act and the Public Health Act. It would seem to me that there may be some powers—for example, the power to evacuate or fix prices or control travel—which may be sort of generic and be applicable to a lot of different sorts of emergencies. There may be other powers that you need to invoke during a public health provincial emergency but you might also want public health authorities to have the authority to invoke in more localized health issues. I'm wondering if you could give us any guidance on what should be where.

Mr Clement: That's an excellent question, Ms Sandals. I confess I haven't turned my mind to exactly which powers would be under the Public Health Act and which would be under emergency management. My recollection during SARS was that I basically trolled around various acts of the Legislature to find whatever power I thought I needed or the system needed to make the right decisions.

For instance, when it came to what we called section 22 orders, which were forcible confinement orders in the case of quarantines that were not being kept, I would use the Public Health Act and use the authority under the Public Health Act in order to enforce that. That was where we found it, so those were the powers that we needed.

When you're talking about evacuation, it strikes me that that is more of an emergency management issue because there may be many circumstances in which evacuation is necessary and desirable.

Similarly, issues of price control: We were quite concerned at one point about the availability of masks and gowns and the prices being charged to the system for the masks and gowns. At one point we were going through 80,000 masks and gowns a day or something ridiculous. Don't quote me on that, but it was a big number.

Mrs Sandals: A very large number.

Mr Clement: But those kinds of price issues are more broad than just public health issues.

I guess I'm giving you a bit of stream of consciousness here because I confess I haven't thought about the dividing line. The only thing I would suggest, though, is that, wherever the line is, you ensure that every tool available is part of the management decisions and that whatever decision is made is accountable and transparent. I always go back to that litmus test because there are going to be a lot of decisions made that are going to be very thought-provoking in a free and democratic society. It was not something I wanted to do, to confine people to a hospital room with a guard outside the room, but in some circumstances that is what we threatened.

We had a case in SARS where an individual knowingly went to his workplace even though he was supposed to be quarantined. Whenever public health phoned the house to see how it was going with the quarantine, his wife would answer the phone and say, "Everything's fine; he's in bed. Don't worry, everything's fine." He actually showed up at work.

He made a decision that affected—first of all, he died. And secondly, he infected his coworkers. This is serious

stuff here. If we would have known that, believe me, I'd have been there with manacles and handcuffs to make sure that individual abided by the quarantine orders, and that was earlier on in the outbreak.

The next time we had this kind of issue of enforcing quarantine was when there was a Catholic high school in York region where there seemed to be some potential for spread of infection, so we quarantined the entire high school population. People were being interviewed by the media, high school students hanging out at the mall when they should have been in quarantine. I had to come down hard and it became an international story that the Minister of Health was saying that if he had to drag them into a hospital room and chain them to the bed, that's what we would be doing to end this nonsense of hanging around in the mall rather than being in quarantine.

I'm giving you that example and that story to indicate that at times you will use whatever devices available to you to protect the public interest.

Mrs Sandals: I'd be interested in that case where people were breaking quarantine. Did you feel you had sufficient powers to deal with people who were breaking quarantine fairly easily, or is that one of the areas where you did what you thought you needed to do and dealt with the political consequences later?

Mr Clement: In terms of the quarantine, we felt we had pretty effective powers. I know the federal government realized that their powers of quarantine were quite antiquated and ineffective. We felt we had better powers than the federal government in terms of the quarantine issue. I believe they've rectified that now at the federal level. That was my recollection, that that was all right.

In terms of evacuation, in terms of cordoning off those kinds of issues, I will have to tell you that if we were forced into that situation, we were going to make the decision and then worry about the niceties of the legalities later.

Mrs Sandals: Those would seem to be areas where in fact the power does not exist, and those would be areas Dr Young drew to our attention.

Mr Clement: That's right.

Mrs Sandals: Thank you very much.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): If memory serves me right, West Nile trailed SARS—

Mr Clement: It preceded it.

Mr Brownell: It preceded it, OK. I just wonder, with those two medical situations, lessons learned from one to the other, could you just—

Mr Clement: Sure. The first year of human infection of West Nile was the summer before the SARS outbreak. Indeed, in one of these strange ironies and coincidences of the whole story, the first press conference on SARS took place as an "Oh, by the way" kind of addendum to an original press conference that I was having on year 2 of the West Nile virus fight. It was the first inkling of something to the public on SARS. I had a weekend press conference on West Nile virus in Burlington and I said at the end of the press conference, "By the way, media,

there's an emerging story with something called atypical pneumonia." We didn't even call it SARS then, it didn't even have that name. We called it atypical pneumonia. "There's a couple of cases in Scarborough. I've decided to do a further press conference on the Scarborough situation tomorrow, so please stand by." So that was the interplay there.

In terms of lessons learned, the one thing I felt quite strongly about after the West Nile virus experience of the year before was that we really had to tighten up our communications with the public. I felt I was too constrained by both the Premier's office and by the attitude of my own ministry on the West Nile virus fight, that perhaps that led to not everyone knowing that we had a problem with West Nile virus. So I was quite determined, in the SARS fight, to make sure that every bit of information we had in real time on SARS was conveyed to the public. To the extent that it educated me on the need to have constant communications, West Nile virus was a good case in point.

Mr Brownell: Thank you.

The Acting Chair (Mr Wayne Arthurs): Are there further questions from the committee? If not, Mr Clement, we thank you very much for taking the time to come in. We've learned a lot. Having you back here is wonderful from the standpoint of enlightening us, the members of the committee. On behalf of the Chair, the committee and the Legislature, thank you. It's been very helpful to have someone here who has been active in the process first-hand from the legislative function as well.

Mr Clement: Thank you, Chair. Welcome to you too. You're a lot better looking than the previous Chair, so it's good to see things have improved.

The Acting Chair: It won't last.

Could I ask the committee to recess until about five to 11? That will give us time to set up our conference call for 11 o'clock.

The committee recessed from 1031 to 1100.

MOOSE CREE FIRST NATION

The Acting Chair: We will reconvene our committee meeting. I believe we have our teleconference on at this point. Gentlemen, welcome. If you'll just give me a minute or so, I'll do some introductions and we'll go from there.

My name is Wayne Arthurs. I'm the Acting Chair of the committee. I believe on the line from the Moose Cree First Nation we have Chief Norm Hardisty Jr and Doug Cheechoo, the EPR project coordinator, coming from Moose Factory. Is that correct, gentlemen?

Mr Doug Cheechoo: That's correct, Wayne. It's Doug here. Chief Norm Hardisty has just entered his office.

The Acting Chair: Great. If I can, let me just tell you what we're up to here, to put a bit of a framework to it. This is the justice policy legislative committee, represented by all three parties. You'll certainly recognize one of the individuals here as a member, Gilles Bisson. It's a chance to say good morning and hello.

Mr Gilles Bisson (Timmins-James Bay): Good morning, Doug. How are you doing in Moose Factory today?

The Acting Chair: Our responsibility here with justice policy is to review the emergency management legislation of the province, particularly focused, though, as it relates to the scale and scope of emergencies that require provincial intervention or the activation of a provincial emergency plan, over and above what might occur at the local level.

Our process has been one where we've provided a number of deputants or witnesses, either here or by teleconference, an opportunity to provide some insights and comments on emergency management and, following that presentation, an opportunity for members of the committee from each of the parties to ask some questions or enter into some dialogue to seek clarification or additional information. I hope that meets with your liking as well.

If either you, Doug, or the chief is making a presentation, can I ask you as well to identify yourselves for us? All of this is being recorded in Hansard, so we do have a verbatim record of the committee hearing. If it's satisfactory, I can turn it over either to Chief Hardisty or to Doug, whoever is appropriate.

Chief Norm Hardisty Jr: Thank you, Mr Chair. First of all, I'd like to thank Mr Colle for inviting us to speak to you today. I also would like to thank him for visiting our community just recently.

Again, my name is Norm Hardisty. I'm the chief of the Moose Cree First Nation. We are part of the Mushkegowuk region, which is part of James Bay.

We would like to share information with you about our new far north emergency preparedness and response centre of excellence, our overall efforts to improve the emergency preparedness and response in our communities and region and to outline the challenges we are working to overcome.

The first part of our presentation will provide context, where we describe our region and the challenging conditions that our public safety and emergency response personnel face in our far north communities.

The second part will discuss our efforts to address our local and regional conditions and share details on our exciting centre of excellence project.

The third and final portion of our presentation will provide specific recommendations on how we can work together to improve emergency preparedness and response in Ontario, particularly in the far north.

At this point in time, I would like to turn it over to our EPR coordinator, Doug Cheechoo.

Mr Cheechoo: Good morning, everyone. I'd like to start off with part one, giving some background on the EPR. When we say EPR, it's in reference to emergency preparedness and response. We'll be using the acronym EPR throughout the presentation, just for clarification. So I'll begin.

Ontario's far north, home primarily to the Ojibwa and Cree Nations of Treaty 9, consists of 49 First Nations

within a territory that covers two thirds of the province of Ontario, stretching from the Manitoba border to the shores of Hudson and James Bay. In stark contrast to other communities in the province, many of our far north communities do not enjoy a basic infrastructure. This is particularly true in the area of EPR. Most of the communities do not have adequate firefighting equipment, ambulances, hospitals or properly equipped police stations. The EPR situation in the Mushkegowuk region communities, for example, is deplorable in most of the coastal communities. What is taken for granted elsewhere is simply not available for most of the communities in our region.

The conditions of Ontario's far north communities are very different from those of other Ontario towns, and these differences have a significant impact on emergency preparedness and response. These conditions include: the communities are very remote, with many accessible by air only, requiring a much greater degree of EPR self-sufficiency than is the norm for road-access communities; the communities experience a higher-than-average rate of emergencies compared to the rest of the province; the communities have high rates of fire, violent crime and illness, which are caused by extensive poverty issues related to historical factors of colonialism and outside control; many of the houses are heated with wood stoves, with little regulation.

Communities are run by First Nation band councils, not municipal governments. Due to their location, the communities are at high risk for natural disasters, such as flooding and forest fires. Because of the small size of the communities, members of the police, fire and medical services are constantly faced with the potential that they may be involved in rescuing their own family members or close friends. This situation results in different psychological reactions and effects from those of an EPR worker in a large urban community.

Many of the residents of the far north communities speak an aboriginal language as their first language and speak English as a second language. Many of the residents have limited education levels and weak literacy skills, which makes it very difficult for them to enter the standard police, firefighting and medical services employment sectors. Often, EPR roles in communities are filled by non-native outsiders and there is a high turnover rate of employees in this sector.

I have worked in my home community of Moose Factory for many years as fire chief and also as coordinator of the Moose Factory Island search and rescue. I have also worked regionally with the Mushkegowuk tribal council, covering an area that stretches from the Moose River basin, feeding into the southern tip of James Bay, north to the shores of Hudson Bay.

The Moose Factory Island fire department is widely recognized for the expertise of its staff in provincial firefighting competitions. In the year 2000, Moose Factory search and rescue was awarded the national certificate of achievement from Canada's National Search and Rescue Secretariat. As a result of the

expertise we have developed and our reputation across Ontario's far north, Moose Factory search and rescue is a lead player in regional emergency response operations in the Mushkegowuk region. Working in conjunction with the OPP and CFB Trenton, it is routinely called in to provide professional search and rescue support to other communities across the far north.

The types of emergencies regularly experienced in the Mushkegowuk territory include flood threats to the coastal communities, often leading to evacuation, which has meant, most recently, evacuations of Attawapiskat, Fort Albany and Kashechewan First Nations, and search and rescue incidents, usually boating mishaps.

1110

The scale of search and rescue operations varies. The largest was a massive search effort that began on October 1, 1999, lasting 36 days and involving some 550 volunteers and numerous emergency response agencies. This search effort was in response to the James Bay tragedy, a tragic fall-hunting family boating disaster that claimed the lives of eight of our community members. While we were recognized by the National Search and Rescue Secretariat for our efforts during this tragedy, we grieve to know that more could have been done in this situation. We have been striving to address the recommendations from the regional coroner's review of this incident, which included a call for better coordination and communication during search and rescue operations, as well as increased public education.

Search and rescue responses to missing boaters are a frequent event in our territory. These operations are often hampered by poor weather conditions and by vast, swampy areas that are very difficult to traverse. In addition, search areas can increase by as much as three times during low tides because of the flat topography of the region.

The rivers and waters of James Bay are the highways of our people. In fact, this month is a good example of this, as many of our community members are right now out on the land enjoying traditional pursuits such as hunting and trapping. These activities often involve travelling as far as 50 to 100 kilometres by boat, in the spring and fall especially, when weather and travel conditions are at their most uncertain.

The demand for search and rescue operations has risen over the past decade and is expected to continue to increase as the population of the area grows and more of our burgeoning youth population take up their right to traditional harvesting activities. In addition, our region is building its ecotourism industry, and the number of visitors using the land and water is expected to increase dramatically over the next few years. The number of SAR-related incidents has risen dramatically over the last 15 years, with Moose Factory SAR reporting an increase in incident response of 600% since 1990, including a total of 23 fatalities. The OPP stationed in Moosonee, which has jurisdiction over SAR in the western James Bay and Moose River areas, reports a similar rate of increase.

We are determined to further develop our EPR capabilities at the community and regional level to ensure the health and safety of our people, and we are making much progress toward this objective.

Part two of my presentation is going to focus on our EPR centre of excellence initiative. For the past 15 years or more, we have been working strategically to improve public safety and EPR services with all of the communities in our region. Our current efforts are focused in a three-pronged approach that includes: the far north EPR centre of excellence, which is now under construction; the planned institute for far north EPR training and development; and thirdly, the regional EPR strategic planning process.

Our far north emergency preparedness and response centre of excellence is a \$4.5-million, 25,000-square-foot energy-efficient facility currently under construction. Our far north EPR centre of excellence is the result of many years of careful planning, design and partnership development. It is bringing together under one roof our local fire, police, ambulance and search and rescue services, as well as the proposed new Mushkegowuk regional emergency operations centre, dispatching and our new institute for far north EPR training and development.

Development of our centre of excellence facility has purposefully focused on bringing together all of our local EPR providers, being the fire, police and ambulance, along with our regional elements. Establishing a common facility is one tool that we are using to effectively establish increased levels of coordination and co-operation within and between our EPR units at the community and regional level. We are striving toward achieving a greatly enhanced ability to effectively take command of EPR incidents in the future through improved physical structures, as well as organizational development.

We are determined to improve the effectiveness of our inter-agency planning and protocol development, communication, training and public education. All of this will lead to improved emergency response times, more effective response procedures and thus increased public safety and security. Our centre of excellence building is replacing the terribly inadequate facilities the local EPR service providers have had to operate out of to date, including an ambulance bay that was a former PCB storage facility and a police station that was built in 1940.

In addition to providing space for our local EPR services, our centre of excellence will also house our new institute for far north EPR training and development. Our institute will be the headquarters for ongoing regional EPR development and training efforts, including research, planning, coordination and other activities. Situated in the centre of excellence, the institute will greatly benefit from having access to state-of-the-art EPR facilities, professional EPR personnel and communications equipment. Our institute for far north EPR training and development will provide EPR training and development services specifically designed to meet the unique and growing training requirements for aboriginal people and northerners living in remote far north com-

munities. It will provide access to custom-designed courses in a wide variety of EPR-related training and education areas.

The institute will provide a northern EPR environment and operations centre conducive to experiential training formats with ready access to local practitioners of far north EPR. The institute will be equipped to deliver a full array of classroom-based programs, including computer-assisted training and videoconferencing. The institute will thus be able to access training programs from outside and/or deliver training from a distance to other regional partner communities. Part of the institute's activities will be the development and production of native language education and training materials geared specifically for remote northern First Nation communities.

Since the spring of 2004, we have been undertaking a regional EPR economic sector strategic planning process. This included a three-day planning session with EPR representatives from across the region. We are now finalizing a regional EPR strategic plan document that will act as a guide for our ongoing efforts to improve our community and regional capacity to provide adequate public safety and EPR services. We are also finalizing the establishment of a regional EPR committee, which will oversee the implementation of our regional EPR strategic plan, as well as being the management body for our institute for far north EPR training and development.

While our planning efforts are underway, we are also implementing related projects, such as the following:

For the last 10 to 15 years, our community has been hosting training courses in conjunction with the Ontario fire marshal's office, Emergency Measures Ontario, the Ontario Provincial Police, OSARVA and the Ontario occupational health and safety organization. We've been coordinating a number of courses and programs with these agencies here in Moose Factory, and these courses have been organized by the local fire services department, but will eventually come under the auspices of the institute for far north EPR training and development. This training role has been of critical importance in the development of enhanced EPR capabilities for all communities in our region.

1120

We are in the midst of preparing a comprehensive forest firefighting, training and business development initiative so that we can increase our capacity to respond to local fires, as well as sending crews out to respond to outside firefighting needs.

We are also preparing to implement a two-year regional public safety awareness campaign called Rise and Survive. We are anticipating funding approval for this project shortly from the National Search and Rescue Secretariat.

Through our regional EPR strategic planning process thus far, we have gained a greater understanding of the needs of our member communities and have developed a direction and focus for our efforts. Our regional vision statement is "Safe, thriving communities with strong, capable and effective public safety systems in keeping

with our ancestors' path of knowledge, preparedness and survival."

We have established five goals for our region. They are as follows: (1) strengthen our EPR capabilities at the community level; (2) strengthen our EPR capabilities at the regional level; (3) generate needed financial resources; (4) establish improved arrangements with outside EPR agencies; and (5) have strong economic development and business interest and support.

There are three specific areas identified thus far in our strategic planning process that may be of particular relevance to your standing committee deliberations. With regard to our goals (1) and (2), strengthening EPR capabilities at the local and regional levels, we have discussed the development of community response units and regional response units. If these can be effectively established, these units would greatly improve our EPR capabilities. We will be looking at this further and developing these over time.

Also, with regard to goal (1), strengthening EPR capabilities at the local level, we have identified a new mechanism for the small, remote far north communities that currently do not have any full-time EPR staff in place. We envision EPR technician positions with the responsibility for prevention and response coordination, including a lead role in preparing and responding to community disasters. These EPR technicians would work throughout the year with community volunteers in all EPR areas, including prevention, response, forest fire-fighting, search and rescue and so on. These individuals would lead the envisioned community response units. These positions would need resourcing and training to enable them to fulfill their role.

With regard to goal (4), improved arrangements with outside EPR agencies, it is our experience that there is a need for a review of EPR-related protocols in the province specific to their effectiveness for remote far north communities. In our discussions we have identified numerous examples of ineffective response and wasted money due to current statute limitations. Often our local response mechanisms are directed to idly wait until EPR resources from outside of the region are mobilized and brought in at great public expense. At other times, simple, inexpensive preventative steps are ignored, leading to very costly response situations.

One example of this is the current volume of the DND Hercules rescues in our region, which could be greatly reduced at great public savings if resources could be identified to enable greater use of satellite phones for those travelling on the land to remote camps. Another potential example would be the use of the Nishnawbe-Aski police services instead of the Ontario Provincial Police for search and rescue efforts in our far north region.

The bottom line in this regard is that our far north region has unique characteristics. We believe that a detailed joint review of the current situation would generate practical response-improving and money-saving changes to the current regime of protocols and statutes.

As a final comment for this portion of our presentation, I want to urge the standing committee to fully recognize that in almost every far north community in Ontario, the current level of EPR personnel, facilities and equipment is completely inadequate, and that is completely unacceptable. In this day and age, in this province of Ontario, it simply cannot be acceptable for far north aboriginal communities such as Fort Albany and Kashechewan to have to put up with Third World or even Fourth World EPR conditions.

Part 3 of our presentation brings us to the recommendations. We have made great strides, working from the ground up, in further developing our capacity for effective and efficient EPR services in Moose Factory, but there is still much to do, particularly if we are to achieve adequate emergency services for the entire region. We have a good record of preparing for and responding to emergencies here in Moose Factory because we have a history of people working together and we have worked hard at bringing training to our staff and volunteers. However, as Dr Young pointed out earlier in his deputation, preparedness and response alone are not enough. We concur with Dr Young that appropriate systems and infrastructure must be in place so that we are ready to handle any conceivable emergency. We do not want to be caught building the boat while at sea in the middle of a storm either.

We believe our centre of excellence and our initiative may be a good model for others to learn from, not only in the far north but right across Ontario. Many of our EPR contacts across the province and beyond have expressed great respect for the concept of bringing our EPR providers all together within a single state-of-the-art facility.

We will continue with our community and regional efforts to acquire adequate resources to develop up-to-date systems and equip and train ourselves to an adequate level. We will do this to increase our prevention and response capabilities, and we do intend to increase our reliance on our primary EPR providers in our communities and regions. Over the coming months, as part of further development of our far north EPR centre of excellence facility, we will be working with our project partners to finalize our communications and information technology plans for our facility. This includes a 911 system, dispatching, our regional emergency operation centre and our training facilities. We would certainly welcome involvement by the province in this process for our mutual benefit.

In order for us to move forward with success, we are tabling the following recommendations:

(1) That Ontario recognize the need and actively solicit the involvement of First Nations' leadership in negotiations between Canada and Ontario regarding the ongoing delivery of EPR services to First Nation communities;

(2) That the province work with our far north aboriginal leadership to launch a joint action committee to review the current state of EPR facilities and equipment

in the far north communities in Ontario and to develop and implement action plans to bring all of these communities up to acceptable standards in this regard;

(3) That a pilot project be jointly established by the province and the far north to investigate the impact of current EPR statutes and protocols on the far north, including a review of current and recent examples where existing statutes and protocols are causing EPR response delays and are leading to waste of financial and other resources, and, further, to jointly develop a far north statutes and protocols improvement action plan;

(4) That the province appoint a lead contact who can work as the provincial interagency coordinator to support our efforts in the Mushkegowuk region to enhance our EPR capabilities in our region and communities and the implementation of our regional strategy; and

(5) That Ontario work closely with our far north EPR centre of excellence initiative to assist with further development of our communications and information technology infrastructure plans for the future benefit of our region and Ontario.

1130

The Acting Chair: Thank you. Before we move to the committee, just a couple of comments. One, thank you for your insightful and thoughtful presentation, and congratulations on your centre of excellence facility. It sounds like a tremendous amount of work has gone into that and it's going to be a tremendous benefit.

Our process from this point provides opportunities for committee members from each of the parties to ask some questions to garner some additional information. If I can just ask you one more time, both Chief Hardisty and Mr Cheechoo, if you're responding, if you could give us your name again; it's for the purpose of Hansard. I'm going to begin with Mr Bisson.

Mr Bisson: Good morning, gentlemen. It's OK; you can say hi, Norm.

Chief Hardisty Jr: Hi.

Mr Bisson: I've always hated these telephone conference things. They're really hard as far as the dynamics of being able to ask questions. I guess my first question is actually to the clerk, if we can get a copy of that submission. I take it, Doug, you could provide a copy to the clerk so that we can have that?

Mr Cheechoo: Definitely. I can e-mail it, if I can get an e-mail address.

Mr Bisson: Katch, our clerk, will give you a call after and work that out. That would be useful, especially when it comes to the recommendations.

I think it was recommendation (4), in regard to appointing a contact person or somebody that you are able to work with in the ministry: Has that been floated with the ministry already, and if so, what kind of feedback did you get?

Mr Cheechoo: No. Actually, that hasn't been formally requested or floated to the ministry at all yet.

Mr Bisson: OK. I was just wondering if it had, because that's probably one of the key things. I recognize as well as you do that part of the difficulty is that the

James Bay, even though it's a big part of the map, is not on the map of most people as they're looking at police services and emergency services. This is no fault of any particular government; it's just, unfortunately, the reality. That would go a long way, so I think that makes a lot of sense.

The other thing, and I guess it's just for the benefit of our committee members, because the finance committee recently experienced the fortune, I would say, of having come to some of our communities up north. I think that Mr Zimmer, who's here, who served on that, as well as others, came away from that recognizing that the challenges we have in all of our northern communities are far beyond what people ever expected.

Specifically to emergency response, I just want to stress for committee members, when Doug and Norm talk about inadequate Third World and possibly even Fourth World conditions when it comes to emergency services, they ain't kidding. We're talking about, for example, in Attawapiskat, the Nishnawbe-Aski police, who are the police for that part of the region, don't even have a motor for the boat so they can go out and try to find a drowned victim or somebody who may be in trouble. Very basic things. The lock-up facilities in Kashechewan and most of our communities are just terrible. If we were to lock people up in the city of Toronto in the conditions that we lock people up in from Moose Factory up to Peawanuck, the Toronto Star, The Sun and everybody would be jumping on it as a scandal. Quite frankly, I think people need to understand that they're not just kidding when they say Third and Fourth World conditions. We're really, really, really in bad shape.

In fact, in a lot of our communities, we don't even have ambulances. Just recently, because of the visit of George Smitherman coming up to the north, we've just approved the money necessary to put emergency services as far as ambulances in Fort Albany. But we had been working on that for how long, Doug? How long have we been trying to get ambulances up in Kash and Fort Albany? Years now.

Mr Cheechoo: Quite some time.

Chief Hardisty Jr: Sure.

Mr Bisson: The thing is, it shouldn't take that much effort to make some of these basic things work. I just want to echo what these two gentleman are saying. We may be far away up on the James Bay, but there's still 11,000 people in need of services. Quite frankly, when you can't even rely on the very basic services, it's pretty terrible.

I just want to convey one story from Chief Mike Metat out of Fort Albany. When I was up there one particular time a couple of years ago, one of the committee members had a heart attack, and here it was 35 below zero outside. They had an ambulance but there was no garage so they couldn't start the ambulance, and we had to cart the patient out of his house and into the back of a pickup truck at 35 degrees below zero to the hospital facility in Fort Albany. It's needless to say what that does for the patient. We can't even count on the very basic services.

The recommendations that Doug and Chief Hardisty make in this report are, I think, key. It comes back to what people have been talking about in this committee, and that is, we need to resource these people. We need to make sure that we have the funding and the resources necessary in order to make things work.

I now want to come to just one question, Doug. I wasn't quite clear what you were alluding to in your presentation—I wish I had the report with me because I'd be able to reference it a lot easier—that is, the better use of existing facilities or services rather than bringing in the OPP from out of Timmins or North Bay or wherever. You referred to the Hercules. I know what you're talking about. When we need to evacuate communities, we bring in the national defence Hercules, but I didn't quite get what you were getting at there. Can you explain that one a bit more?

Mr Cheechoo: Responding to Mr Bisson's question or request for clarification, when we talked about improving response systems and making every effort to utilize our limited resources right across the province, I guess we can say, we make every effort to get the authorities that have the mandate in the province to respond to search and rescue incidents, namely, the OPP. We give them a call and we advise them that we got a call from whoever, a family, or at times it's been Nishnawbe-Aski Police Service, and the Moose Factory search and rescue or the Moose Factory fire department gets a call. We advise the OPP and we give them the information. They ask us to stand by. In the meantime, family members start calling us. These people are stranded out there. They need help right away.

So we're kind of caught between a rock and a hard place, you could say. We're waiting for the authorities, the OPP, and they take some time. I guess it has to go all the way through their system. I don't know how far it goes; to Orillia, probably. Those decisions have to be made, and it takes time. In the meantime, we know we can respond by canoe, with some of our own expertise and traditional knowledge. We may have a helicopter on site that we can hire immediately and respond.

It's very difficult to try to work with the system and the authorities in the province. There have been times when the OPP helicopter had to come from Sault Ste Marie or even Sudbury. They've run into weather delays and it has sometimes taken two days to get on site. In the meantime, they tell us, "Can you just stand by? Do not respond. Wait for us. Hold off. Don't go." We had to make some tough decisions. We've said, "No. We've waited long enough. We've got to go because there is somebody in need of help. We can't wait any longer." Those kinds of protocols, procedures and policies have to be reviewed. We have to utilize the local expertise to respond in the quickest, most efficient and effective manner.

With regard to the DND Hercules and so on, yes, there are times when they are needed, but there are also times when perhaps, by building local capacity, strengthening our capacity and providing some resources and equip-

ment, maybe we can respond to those incidents where they're not as serious and do not necessarily warrant the dispatching of such major pieces of equipment, costing enormous numbers of dollars. From that perspective, I think we can certainly meet many needs in terms of the financial cost, building capacities and so on, working together co-operatively in the whole province. I think that's where we're coming from.

Mr Bisson: Doug, just another two quick questions. The first one: In the event that you needed a helicopter to come in to do a search and the OPP is not able to get there, if you go out yourself and get one of the choppers up in Moosonee/Moose Factory to do that, is that borne by you or are you able to bill that back to the Solicitor General?

Mr Cheechoo: There are very few times I can recall that the Solicitor General has taken responsibility for those costs. Most of the time it's either Moose Cree First Nation or Moose Factory search and rescue that has taken responsibility for those costs.

Mr Bisson: It would have been cheaper to use the local choppers, I would imagine, in many of those cases, right?

Mr Cheechoo: Definitely.

Mr Bisson: I think that's what we're trying to stress here, the ability to utilize some of our local resources.

Do I have time for one other question?

The Acting Chair: Yes.

Mr Bisson: The other question was in regard to the budget for the training facility itself. Can you bring us up to date, where you're at as far as any core funding that would help cover the cost of doing the training once the building is up and running, as far as training people in emergency response at that facility?

1140

Mr Cheechoo: Unfortunately, at this time we do not have a budget for the training component, but that's something we're certainly going to be working on in the near future. When we had the sod-turning ceremony to initiate the construction last year, we had the Ontario fire marshal's office instructors on-site, so we invited them and they were quite excited and committed to coming up to continue doing the training they've been doing. Likewise, we're going to be utilizing the provincial agencies that are out there like we've been doing over these years. We've been working with the OPP, the Ontario fire marshal, and obviously we'll be getting into the ambulance services for them to provide some training. I guess we'll be looking at, as far as cost, maybe some of the training materials, the operational costs for the institute and obviously some travel costs for the participants and so on. A budget? No, not at this time. We don't have a budget, but it's something we'll certainly develop in the near future.

Mr Bisson: Just to committee members, and I'll end on this note: Some of you—in fact, Mr Colle, who is here—would have seen the facility that's being built. It's probably second to none as far as a facility. My worry is, and that's why I asked that kind of leading question: It's

nice to build a facility, and we thank the heritage fund and others from the province who funded it, but we need to make sure we've got the dollars so that it can function. We need dollars on the core side in order to have the money necessary to train people on James Bay and other parts of the north when it comes to emergency response.

The Acting Chair (Mr Mike Colle): I'm back. I was in the middle of a cabinet presentation on another matter. I want to say hi to Chief Hardisty. Norm, how are you?

Chief Hardisty: Pretty good, Mr Colle.

The Acting Chair: How's the weather up there?

Chief Hardisty: It's really nice.

The Acting Chair: Yes. It's always beautiful in Moose Factory. And Doug, hello; how are you?

Mr Cheechoo: I'm doing fine, thanks.

The Acting Chair: Thanks so much to both of you for taking time out, as I'm sure Gilles Bisson, the MPP, said. Those of us who have travelled up to the beautiful James Bay basin discovered this pearl called Moose Factory, and in the middle of the pearl was this state-of-the-art centre which I think is exactly what this committee has been trying to find as part of the solution to emergency management and the needs that exist, especially in northern rural parts of Ontario. In fact, I've been talking with a number of my colleagues—David Zimmer was there with us too—about how maybe this could be used as a model, not only from a physical perspective but also for a training centre, whereby people from all over Ontario could almost go to Moose Factory. I think that was one of the questions I had: Is the centre going to be a focal point for updating emergency preparedness training, and is that going to be available to different government or municipal bodies throughout Ontario? Is that what your plan envisages?

Mr Cheechoo: If I can respond to that: Definitely the training institute is going to be open to anybody in Ontario, or anybody across the country, for that matter, who's interested in accepting or taking some training out of this facility, the training institute.

The Acting Chair: Yes. That's one thing we've heard over and over again. We just had the Police Association of Ontario talk about emergency preparedness training. It would certainly fit in with the approach of making people prepared. On top of that, you have the experience of many years of emergency response. I know that you, Doug, were telling me about the number of activities you've had to respond to over the years. Can you give us a couple of examples, just to put on the record, of some responses you've had in recent years?

Mr Cheechoo: The major incident that we responded to and coordinated was the James Bay tragedy that happened in 1999, about this time of year. I spoke to it a bit earlier in my presentation. It was a multi-agency coordinated response and effort. It ran in great expanse, but overall we were able to recover the victims of the tragedy and we brought some closure. It was quite successful in terms of coordination and working with the many agencies that were involved.

There have been other incidents that we've responded to in assisting other neighbouring communities. We've

been up to the community of Peawanuck to assist with some search efforts for a missing community member. Up in the communities in Fort Albany we've responded to some requests, and also in Kache and Attawapiskat. We've grown and established SAR to be recognized as a leading agency to respond to a number of different types of agencies, and we continue to play a lead role in that whole area.

The Acting Chair: I guess the key thing is that you've had the experience and the realization—you have to have this multifaceted, multi-agency response, right? One provider cannot do the job. That seems to be the whole philosophy behind your approach.

Mr Cheechoo: Yes, that's very true. There have been many times in a lot of incidents where we've had OPP personnel compliment our work. I'm quite positive and quite sure that they've learned some things from us also. Likewise, we've learned a lot from them. There's some good collaboration and there are good working relationships there.

The Acting Chair: Doug and Chief, I'm going to now send it back to other members of the committee who want to make a couple of comments.

Ms Broten: Thank you for your leadership on this issues of emergency preparedness and management. One of the reasons this committee identified the need to speak to communities outside the larger communities that most of us are familiar with is that the mandate of this committee is to look at provincial emergencies—an emergency that would be of such a large nature or scope or however you might define it. That's one of the objectives of this committee, to determine how we would respond, what powers we would need as a province. I want to ask you to speak about that issue.

The city of Toronto would have a large layer of resources that they could turn to simply by being a large metropolitan community, in the wake of SARS, for example—city of Toronto health, city of Toronto police etc. If we were to look at some type of emergency that would occur in our northern communities—for example, a forest fire—I wonder if you could share with us at what point in its size or breadth of emergency you would need assistance from the province and would no longer be able to cope with that on your own in terms of the resources you have.

Mr Cheechoo: If I can take a good shot at answering that question: I want to utilize an incident that happened in a remote community, I believe it was just last year, where they had an aircraft that went down. I believe it was in Summer Beaver. This happened last year, where there were maybe up to seven or eight community members who perished in that accident. I followed the news quite a bit and from what I could tell, nobody, not even the province, was quite prepared for such an incident to happen.

In remote communities in the province there's a lot of air traffic. Some of the aircraft we're getting are a fair size. We have Dash-8s that hold up to maybe 30 passengers. I would say that for an aircraft incident, and

with the diseases that are surfacing—we don't know what's going to pop up next. I think with any potential type of disease that could surface anywhere in the world, and especially in Ontario—even like the hurricanes. We're having all kinds of different types of weather and different weather situations in all parts of the world, and we're surrounded by water. I think we have to take a good inventory of potential disasters that could happen in our area and be prepared, and I think for those types of things we'll certainly need some big-time help from Ontario.

Ms Broten: Thank you very much for your response.

1150

Mrs Sandals: Good morning, gentlemen. Thank you very much for your presentation. You've mentioned the issues of protocols and statutes several times and sorting that out. I'm just trying to get an understanding of what we're talking here in terms of jurisdiction and who's responsible for what.

I take it when you talk about your region, essentially you're talking about the whole James Bay watershed. Is that true?

Chief Hardisty Jr: Good morning again. This is Chief Norm Hardisty. In any operation that we get into, and in this case it's emergency preparedness, I really feel that a lot of the input has to come from the grassroots people who are in the immediate area. I really feel that some agency, some organization, has to play a lead role.

In regard to your question, I really feel that common sense comes into the picture when we respond to an emergency situation—the fact that we are here, we need to play that lead role, which is inclusive of involving Canada and also the province. We need to take a look more at the common sense approach rather than looking at statutes or any type of policies that are simply not working for us. We need to work right from this area and say, "OK, this involves everybody." Certainly we need to meet the immediate needs that are here.

Mrs Sandals: Just for the clarification, though, of those of us who are located down here in southern Ontario, when you talk about that area, are we dealing with some parts of the land mass that would be under control of band councils and others that would be unorganized territory, not necessarily under control of band council but not a municipal structure either? Is that true?

Chief Hardisty Jr: If we look at the historic picture of Moose Factory and the Moose Cree people, we have an area of about six million hectares that we refer to as our homeland, traditional territory. We take responsibility, and we always take guardianship of the lands within our area. When it comes to any land, water or air emergency, we certainly feel that there is a need for us to respond to these situations.

Mrs Sandals: OK. But you've mentioned federal response through DND. You've mentioned provincial response through the OPP. You've mentioned your own search and rescue, which seems to be very active in your area. I'm just trying to get a handle on who does what and when you would call on the federal jurisdiction,

when you would look after it locally, when you would call the OPP. That's not clear to me, when and why different organizations are being called.

Mr Cheechoo: It's Doug Cheechoo. I'll make an effort to answer that. When you say, "It's not clear to me," you're not the only one it's not clear to. It's something that we have to work around and work with when the time arises. It does create some confusion. That's why we're asking that protocols and statutes—it's time to review and amend and to include community agencies that have the ability and capacity to respond to incidents now.

We're talking about protocols and statutes right from the top. If we're talking about the federal government, they enter into discussions for agreements through the province to the communities in Ontario. We have to be involved at those levels also and become more involved in those discussions and negotiations.

Mrs Sandals: So this is really then a three-way discussion that involves the federal government, the provincial government and the First Nations people, who are actually the people on the ground.

Mr Cheechoo: Exactly. It's got to happen at that level. It's also got to be incorporated into policies and procedures of the agencies throughout the province on how they're going to work more with the grassroots people or the community agencies and departments.

Mrs Sandals: Thank you very much. That's helpful. We can all continue to be somewhat confused.

The Acting Chair: I guess that wraps it up. It's Chair Mike Colle. Really, on behalf of the all the members of this committee, we do appreciate you taking this time to give us an insight into an excellent example of co-operation and emergency response coordination that you're undertaking in Ontario. That's why I think the number of us who were on the committee that heard deputations up in Moose Factory in regard to revenue-sharing, Gilles Bisson's bill, were quite struck by this example of necessity being the invention—I can't think of that phrase.

Mr Bisson: Mother of invention.

The Acting Chair: Yes, necessity being the mother of invention. But you've had to do it because there's nobody else there to do it for you.

On behalf of the committee, I want to commend certainly the Moose Cree First Nation for this outstanding leadership you've shown. I think you can give us, and the rest of Ontario maybe, an example of a model that we could use to the benefit of all Ontarians.

I want to give special thanks to Chief Norm Hardisty Jr, the chief of the Moose Cree First Nation. Thank you so much, Chief, for making yourself available.

To Doug Cheechoo, the EPR project manager for Moose Cree First Nation up in Moose Factory—someone told me it's the oldest English-speaking settlement in Canada or North America. That's an amazing place. I just talked to a member from Sarnia, you'll be glad to know, Caroline Di Cocco, and she said she visited Moose Factory to see the tour. She stayed at the Eco-Lodge too.

I think you've got the makings of an interesting place where maybe emergency preparedness first-line responders can go from all over Ontario to Moose Factory and get a hands-on course on emergency preparedness right there from experts like yourself.

Again, on behalf of the committee, congratulations on your hard work over the last five years you've been working on this. Best success, and hopefully through the work of this committee we can enhance the good work you're doing up in the James Bay basin.

The last thing I'll say is, I was certainly impressed that the Moose Cree First Nation has taken it upon themselves to be the stewards and guardians and protectors of over six million hectares of this province. We shouldn't take that for granted either.

Mr Bisson: I'd just point out, it's not only Moose Cree but every other First Nation.

The Acting Chair: Yes. It's amazing work they do, to take on that responsibility.

Again, thanks to you both. Please give our regards to all the wonderful people up in Moose Factory.

Chief Hardisty Jr: Thanks, Mr Chair. I'd like to make a brief closing comment.

Mr Bisson: Yes, but before you do, say hi to Charlie Chicken for me.

Chief Hardisty Jr: OK. I'll do that.

I just wanted to thank Doug for his in-depth and comprehensive presentation on behalf of Moose Cree. I also wanted to thank the Chair and the committee for listening to us. We apologize for not being able to make it there in person, but certainly our presentation was made very clear. The bottom line here is: Canada, Ontario and the Moose Cree First Nation, along with the communities here, need to work together to ensure that we have—I think the buzzword here is "adequately funded emergency preparedness operations." That's what we're shooting for. It is our hope that the province can help us in that regard.

Again, I thank you all, and have a nice day.

The Acting Chair: Thank you, Chief and Doug, again.

Members of the committee, we're going to adjourn until 8:30 am tomorrow in room 228 upstairs.

The committee adjourned at 1159.

CONTENTS

Wednesday 13 October 2004

Emergency Management Statutes Review	JP-323
Police Association of Ontario	JP-323
Mr Bruce Miller	
Mr Tony Clement	JP-329
Moose Cree First Nation.....	JP-334
Mr Doug Cheechoo	
Chief Norm Hardisty Jr.	

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**Standing committee on
justice policy**

**Comité permanent
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**Emergency Management
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 14 October 2004

Jeudi 14 octobre 2004

*The committee met at 0838 in room 228.*EMERGENCY MANAGEMENT
STATUTES REVIEW

CRISIS MANAGEMENT SPECIALISTS INC

The Acting Chair (Mr Mike Colle): I'll bring the standing committee on justice policy to order for Thursday, October 14, 2004.

We're going to begin today with the deputation from Crisis Management Specialists, Alan Bell and Brian Hay, if you could come and sit in the front row there, please. Just to let you know, this is being recorded for Hansard and copies will be available on the Internet, or on hard copy if you wish. I would also mention that the format is that you have approximately a half-hour, and if you would like to use some of that time for questions and comments, leave that open for members of the committee to offer questions and comments, that's usually the format we use.

So if you could begin, and start by identifying yourself for Hansard. I guess you're Mr Bell.

Mr Brian Hay: No, I'm actually Mr Hay.

The Acting Chair: Sorry.

Mr Hay: That's quite all right. Mr Bell couldn't join us this morning.

My name is Brian Hay. I am a retired military officer and I've been chair of the Mackenzie Institute or chair of its advisory board for the past 13 years. I want to thank you this morning for the opportunity to address you.

In that capacity, I've had the opportunity to examine crisis and security situations in Canada, the United States, parts of Europe and Israel. I'm also a senior officer of a small consulting firm, Crisis Management Specialists, which deals with crisis management. We are often invited by larger firms to work with them because of our particular expertise. I've had the opportunity to consider what is needed for responsible preparation in the community to respond to unplanned events, whether occasioned by weather, accident or malicious intent.

The key question you are addressing is whether the Ontario government should enact additional legislation to increase the emergency preparedness in the province. Before I give you my answer to that question, I would like your permission to address some related issues.

No society can ever be 100% secure, but no society can afford to approach the future on the basis of, "It can't happen here." Responsible emergency preparations need to be based on the notion of when, not if. Unfortunately, in our opinion, Canada in general and Ontario in particular suffer from at least two major, some would say cultural, inhibitions when it comes to proper emergency preparedness.

Canadians, specifically Ontarians, do not believe that a terrorist attack or a world-scale crisis will happen here. We suffer from a "deny and repress" syndrome, as it were. Somehow, because we are "nice" people and represent a cosmopolitan community, we should be considered immune to the vicissitudes of other parts of the world.

This is not a new phenomenon. I personally experienced it in 1979 when the then-federal Minister of Energy, Alistair Gillespie, refused to accept that Canada should participate in the world shortfall of oil occasioned by the Iranian revolution because, "Canada doesn't import any oil from Iran." Even though this federal minister was president of the International Energy Agency at the time and the rules of the agency were that all countries should share shortfalls pro rata, for some reason he felt that Canada should be exempt; hence, the myth of the so-called Exxon diversion.

Even though Canada has been placed publicly on the terrorist hit list today by none other than Osama bin Laden, and every country on that list, other than Canada, has been hit with a terrorist event, I've had responsible people in the community ask the question, "Why would they ever commit a terrorist act in Canada? We haven't bothered them." This perception unfortunately undermines not only the ability to take concrete steps, but even to think about the unthinkable. Together, the lack of thought and action leaves us vulnerable. I think we should remember that CNN recognized as recently as two nights ago that Canada is a jihadist incubator. Canada births and grows its own jihadists.

The second problem inhibition is best illustrated by the National Post headline on page 2 of their Monday, October 4, 2004, edition. The headline proclaims, "Millions Spent on Fizzled West Nile Threat." A reasonable inference from the wording of that headline would be that the millions of dollars were spent unnecessarily: The threat fizzled; it wasn't real. Yet the story points out that the way in which the money was spent may have actually reduced the threat, while also suggesting that the

threat was cyclical and could return. The problem with this kind of reporting and this kind of thinking is that it impacts upon and is reflected in our political culture.

I've had a senior minister of the Ontario government say to me, and I quote as best as I recall, "Brian, if I spend \$2 million to fix a problem that nobody knows about or one that doesn't happen, I can be criticized for wasting money. But if I spend \$100 million fixing the problem after it occurs, I can be a hero." Presumably, then, everyone will agree that it needs to be done after the disaster has happened. Suppose the money hadn't been spent on the West Nile threat or that West Nile had been worse this year. Would that headline then have been, "Government Fails to Protect the Public; Inadequate Resources Assigned"?

Let's turn to some real examples of the lack of preparedness, the lack of forethought, the lack of proper planning, and the lack of responsible use of resources. These are only a few situations that I know about; others know much more.

In a high-tech community in Ontario just five years ago, when the municipality wanted to purchase new radios for its emergency responders, it specified that the radios would be on frequencies different from that of adjacent communities so that the other communities could not overhear the communications. Would anyone be surprised that disasters and crises do not follow recognized political boundaries, and that maybe the ability to share communications during a disaster would be a good thing? Apparently this was a lesson also learned in New York from the tragedies of 9/11.

Another example was the major chemical plant fire in Scarborough in April 2000. Aside from the fact that the fire department did not have a complete, current inventory of the chemicals present on the site, nor did they have the means of ascertaining how the chemicals would interact toxically, the standard operating procedures of the fire department and the police department at the time were such that on-site decisions of each agency were in conflict. Each department had to call its superior headquarters in order to reconcile the inconsistent standard operating procedures. Apparently the incompatibility in procedures had not been noticed before or worked out in advance; they hadn't run any actual real-type exercises. Fortunately, this incompatibility appears to have been now addressed, at least in part. But when was the last large-scale exercise involving early responders in Ontario's capital city? Can you recall it?

About the same time in 2000, in Sarnia, there was a major chemical release from one of the plants. The emergency responders arrived on the scene to find 34 people gasping for breath. They immediately gave them oxygen. Unfortunately, when you combine oxygen with hydrogen disulphide gas, to which the people had been exposed, it produces hydro sulphuric acid in the lining of the lungs resulting in tissue burns. Unfortunately, the fire department in Canada's major petrochemical city didn't know what chemical had been inhaled and didn't know how to treat it properly. On another occasion, the city of Sarnia

had to be advised by their American neighbours that there was a noxious leak in Sarnia because Sarnia's detectors didn't pick it up.

More recently, in my commercial capacity, I can tell you that we spent time talking with the Ministry of Health and Long-Term Care and Emergency Management Ontario during the first couple of years of this century. We told these government agencies that we did not feel the province was well prepared for a major epidemiological outbreak, such as the pandemic that so many scientists and medical people believe will occur. We were told that we were wrong, that the province was as well prepared as it could be. I guess that it was felt to be true in a sense, given the resources that were seen to be available.

Then came SARS, a major epidemiological outbreak. I don't think anyone today would argue that Ontario was well prepared. In fact, in both March and April 2003, I personally offered the Minister of Health and/or his agents internationally developed and proven software that would have helped to better manage the resources that were needed to address SARS. I also offered new, admittedly unproven, software that would have helped track in real time those who were exposed and were infected. This offer was declined on the basis of being "too late and unproven." Remember, we had been talking to them for two years. It seems that a proven paper-based system was in place, perhaps for several decades I guess, with which people were comfortable.

I was also told that the province had joined CiPHIS, the Canadian interprovincial health information system, and that that solved the problem. Quite frankly, I did point out that CiPHIS was, at best, a government program still in the design stage with little relevance to the immediate operational needs of hospital emergency wards or intensive care units. Nonetheless, I was told that Ontarians should feel safe as a result of this membership.

Most medical professionals suggest that the coming pandemic will hit those aged 25 to 40 most specifically. That age group is the same as our primary responders, our caregivers and parents in our society. It's hard to feel safe if these folks are not available.

Ontario also houses several nuclear power plants, as we all know. One is protected by an on-site, specifically trained security force dedicated to the facility. The others are protected by a local police force under contract. While the police personnel are implicitly dedicated to that facility, the police procedures and protocols are not facility-specific. As well, these police personnel can be pulled from the site in the event of a major problem elsewhere. I am advised, as well, that there are major staff retention and motivation problems regarding these particular police personnel, as there were also in recruiting them originally.

0850

Emergency Management Ontario's prime mandate concerns the possibility of a nuclear incident. It would perhaps be more assuring if the government agency responsible for the facility and the government agency

responsible for the security worked more in tandem. It would even be more reassuring to the residents of the community of Pickering if there were an agreed-upon, modern community notification system should difficulty arise; 1940s sirens technology is probably not acceptable in 2004.

I know that we have some very dedicated people working as our public servants in Ontario. I've had the privilege of attending, at the invitation of the government, the conference on counter-terrorism in Niagara Falls in February 2002, entitled *Intelligent Responses*. Over 500 of Ontario's best emergency responders and crisis managers were at that conference. Lessons were learned from the experiences of Ireland, England and Israel, among others. Plans were drawn up for better coordination, better communications, more resources and enhanced facilities.

The government of the day actually passed some new emergency measures legislation for Ontario, but it was some eight months later, in November 2002. It appears that some action was taken, but is it enough? Was it properly funded, resourced, coordinated and maintained? Let's look at the record.

The emergency management legislation says that the individual resident of Ontario is the first line of defence—not fire, ambulance or police personnel. Mr Chairman, have you been told this? Have you personally been told that you were the first line of defence? Has the public been told this? Have we been educated as to what we are supposed to do?

In the United States, they actually have community-based volunteer programs. These would help educate the public in this regard. Such a program was started at a modest level in Ontario with a budget of about \$1 million a year for training, hard hats, gloves and safety vests. That program was cancelled last spring due to budget limitations.

The legislation also requires municipalities to have emergency management plans which actually follow a format so that the plans of one municipality might be somewhat compatible with that of their neighbours. This, believe it or not, is actually a major improvement. Before this happened, there was no comparison, or it was, at best, incidental. Specialized training programs were developed to help municipal personnel develop such plans. My understanding is that those programs have also been cut back. Recently, a medium-sized provincial agency tried to sign up its personnel for some incident command training, yet they were told there was no room until next year.

Individual residents and government agencies are not the only entities within our societies. What does legislation require of commercial building owners and managers, where most people spend their working hours? The Ontario building and fire codes do have specific requirements regarding material and construction standards. There are also regulations requiring pre-fire plans for commercial buildings to be filed with the building and fire departments, but over half the buildings in Toronto

do not comply. There are supposed to be regular fire inspections, but overworked staff are hard-pressed to do the job. Every public building is supposed to have an evacuation plan and to exercise it. When was the last time you saw people participating in a fire drill for a major downtown building?

What does the legislation demand of business owners and operators? Are they required to have emergency plans that dovetail with municipal plans? In Australia, such legislation has been in place for the last two years and the effect on preparedness has, in the words of one expert with whom I talked, been startling. Australia's standard is "no deaths, no injuries," but here, we buy body bags. Perhaps they cost less, but only at the outset.

For at least three years running, there has been a request by Ontario's professional emergency managers for a new emergency operation centre. I have visited the current site, which is located on the 20th floor of a downtown government building. The quarters are cramped. There are no breakout rooms. There is some security, but in order to go to the bathroom in this facility, one has to go out of the secure area and then return to the secure area. This is neither convenient nor good security. There are no food facilities, no bathing or sleeping facilities in the building, and yet it is supposed to run on a 24/7 basis. More importantly, there's no blast-proofing on the windows. The building is not over-pressured, so the air conditioning system can ingest any toxic materials from the outside. The building has no reliable independent power supply, so when the power goes out, you can hang a sign on the centre: "Sorry. We're out, too." Rumour has it that they were still picking pieces of pizza out of the computer keyboards a month after SARS was finally over.

If there is a major problem in downtown Toronto, Ontario's capital city, is there a plan to evacuate the cabinet? Has the plan been exercised to see if it actually works? If it became necessary to evacuate the city of Toronto, could it be done in an orderly fashion, in less than 24 hours?

In downtown Toronto, there are trucks on the street every day that have the potential to be powerful bombs. We had a taste—an *hors d'oeuvre*, as it were—of what could happen just last Sunday in Thornhill when the tanker truck exploded. Every day, trains loaded with toxic and potentially explosive materials still run through our cities. The Mississauga train derailment occurred 25 years ago next month, but rail tank cars still use the old, unreliable pressure relief valves they did then. There are also facilities in Toronto which, if ignited under the right wind conditions, will cast a pall of toxic smoke over large parts of the city.

There is at least one storage facility in central Toronto of nuclear industry material which could make the city uninhabitable for quite a few years if the contents were exploded into an aerosol cloud. In another Ontario city, there are large stores of a toxic gas under pressure which can kill in concentrations of more than one part per billion. That's like one drop in this room would kill us

all. Think of what would happen if one unit was exploded or it leaked or if some of the gas was bled off into a container and then released into one of the Great Lakes. There are over 3,000 radiological sites in the province. Each could be a source of material for a dirty bomb. How secure are they? Some people may think I'm acting like Chicken Little. I am not.

May I remind the committee that we are a wonderful cosmopolitan community in Ontario, but we've had some experiences of racial intolerance and religious intolerance here as well. Some of our problems are homegrown, like Ipperwash. May I remind the committee also that there are several indications that some new Canadians, most of whom have brought much richness to this country, have also brought cases of their history of conflict.

The wife of a former warlord in Mogadishu, Somalia, lived on welfare in the city of London, Ontario. We've had tombstones and cemeteries desecrated. We've had hate messages scrawled on walls. A current sitting MP a number of years ago got into considerable hot water for sponsoring the status of a former minister of a Middle Eastern government as a refugee, who ultimately returned home to be executed by the government of that country. Let me remind you that it was in Ontario that a Turkish chargé d'affaires was assassinated. You can talk to the counter-terrorism personnel of the RCMP or the OPP or the Toronto police about the fundraising that goes on in various communities here to facilitate conflict in other countries.

I am not taking sides or pointing fingers at any one group. I am simply pointing out that some people in this community are involved in promoting the conflicts in other countries, and on occasion, those conflicts have spilled over into our community. Those are the human-made events which disrupt our society to which an emergency response is needed. More could well be coming our way, given the unfolding events in the Middle East.

Then there are the so-called normal things, like power outages and blackouts, bad snow storms, ice storms and the like. All of these require reasonably sound forward planning if we are to minimize the disruptive impact on our society and on our economy.

It was recently estimated that the accident on the 401 involving a paint hauler and a garbage truck cost the Ontario economy over \$1 billion in lost productivity in one day. What would the cost be of a radiological explosion or a truck-tanker bomb being ignited in downtown Toronto? What would the cost be of a pandemic outbreak of the avian flu or SARS 3 in an already maxed-out hospital system? What would the cost be of a major terrorist act among an ill-prepared, ill-informed and ill-trained public?

0900

We have spent billions of dollars on our vaunted educational system and our medical facilities. Perhaps it is time we also ensured that our population understood what it can and should do in an emergency. Perhaps it is time that those charged with emergency response be given adequate tools, starting with a modern operations

centre and a communications system that links provincial bodies with appropriate municipal bodies and, yes, federal authorities and indeed our international neighbours. Perhaps it is time to ensure that the legislation and regulations already passed or in place are properly funded and managed before additional legislation and/or regulations are introduced. Paper motions are not a substitute for real-world action.

Perhaps it is time that society demanded that those tasked to protect us—each agency or level of responsibility, whether municipal, provincial or federal—actually work together to protect the community more than their own turf. Perhaps it is time that we actually conducted some large-scale simulations to see if our plans work, and in some cases design and rehearse the plans we don't have today. And perhaps it's time that we changed our thinking to, "It can happen here." It's only a matter of when, not if.

But if this committee or the government deems that new legislation is warranted, let's create legislation that obliges all parts of our society to be responsible for keeping our communities liveable and safe. Let's make it legislation that allows, indeed requires, participation of both public and private sectors and individuals, and provides for repercussions when the necessary or critical participants refuse to participate or co-operate. Let's also make sure that it is properly resourced and funded on an ongoing basis. We are all in this together, and there must be no such thing as a free ride or a "We didn't know."

Perhaps it is time that we allow our political leaders to believe that they would be heroes by preventing problems through proper planning and preparation rather than by putting expensive bandages on gaping wounds. It has been said that those who do not learn from history are condemned to repeat it. In emergency preparedness, as in military operations, proper planning prevents poor performance. Terrorists only have to be right one time, one day; we have to be right 365 days of the year. If it is predictable, it may very well be preventable.

The Acting Chair: Thank you, Mr Hay. Do we have some questions or comments from members of the committee? Mr Kormos?

Mr Peter Kormos (Niagara Centre): No, thank you.

The Acting Chair: Mr Zimmer?

Mr David Zimmer (Willowdale): No, thank you.

The Acting Chair: Anyone else?

I just have one question. Are you aware of the 311 pilot project in Sarnia? We had a deputation from Bell, which has instituted this pilot project where they can do this blast of phone numbers if there is a chemical spill, for instance, in Sarnia. Do you think that kind of approach might be the best way—you mentioned the old 1950s siren approach. Is that feasible?

Mr Hay: Absolutely, sir. As a matter of fact, we're intimately familiar with their program. We're working with Bell Canada on that program, because there's some other software that will integrate very nicely with it. It was tested in 400 homes. It was extremely well received. The people who tested it actually didn't want to give it back. They thought it was a great idea.

There has been a proposal put forward to industry in the city to put those 10,000 units in key homes, schools, office buildings, libraries, medical facilities and so forth, so they can be properly warned of an incident. The question is, who pays? Industry basically doesn't feel—and I cannot speak for industry, let me make it clear, but my conversations with them have suggested that they don't feel they should bear the entire cost. We actually put together a proposal with Bell Canada to put those 10,000 units in and support them with the appropriate personnel and the necessary software, working with the folks at emergency preparedness in Sarnia: Cal Gardner, who has probably spoken with you in this regard.

The Acting Chair: Yes, that's right.

Mr Hay: The whole package over five years is \$1.8 million, which is nothing compared to what could happen and what it would cost if something got loose in that community, wasn't properly dealt with and you ended up having a lot of people in the hospital or in worse shape.

The Acting Chair: The second comment I'll make is that your reference to that story in the National Post basically condemning the government for spending money unnecessarily on the West Nile threat is interesting. Again, you made the point very clearly that the civil servant or government agency that spends money on prevention is accused of wasting money, and yet the civil servant or government agency that spends \$100 million after the fact becomes the hero.

Mr Hay: Absolutely, sir. We've got to change that political culture and that public expectation. It is just—I was going to use a phrase that most of us are familiar with, but let me just say it's backward.

The Acting Chair: Now that there wasn't an outbreak of West Nile, they shouldn't have spent the money. You can imagine what would have happened if there was an outbreak.

You've given us a good overview and a lot of food for thought. I think one of the things we were charged to do is sometimes think about the unthinkable. Hopefully we'll come up with ways of better preparing and protecting Ontarians in case something extraordinary does happen. Thank you very much for your presentation.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Acting Chair: The next presenter—and I'm sure he came by subway—is the Canadian Civil Liberties Association general counsel, Alan Borovoy. We were talking about the traffic jams and trying to get here with all this construction going on. Those of us who walked or came by subway got here on time. I know you're an avid subway person.

Mr Alan Borovoy: It's a vicious rumour.

The Acting Chair: We're trying to promote public transit.

Mr Borovoy, as you know, the committee's format is that you've got an hour. You can take up the hour yourself, if you want, or you can leave part of it for questions

and comments from the committee. You may proceed by introducing yourself.

Mr Borovoy: Does that include singing as well?

The Acting Chair: Whatever you wish.

Mr Borovoy: I regret that I actually have something in writing. I'm not used to this state of preparation. But since I have it, I'm going to distribute it. There's a convenient way to do this, I'm sure.

The Acting Chair: We also have a copy of a letter that was sent to you on September 13, outlining some of the parameters this committee is looking at. I think members of the committee have a copy of the letter that was sent to you.

Mr Borovoy: Well, I'm glad they have it. I probably have it at the office. You will forgive me if it isn't at my fingertips.

The Acting Chair: We'll give you another copy, in case somebody refers to it. We'll just get some copies made.

Mr Borovoy: I'm in the position, since this was just prepared yesterday, that as uncomfortable as it may be for me, I'm going to read these, but also probably accompany them with some remarks that are not on the paper.

It's all based on the assumption that there is a demonstrated need for additional emergency powers. I know that it has been alleged. So far, I haven't seen the documents, and it may be that I just haven't seen enough of the background papers. I don't know that it's been demonstrated. However, on the assumption that it is demonstrated, these respond to the bill that has been tabled or is before you in whatever form it is.

These are all suggested amendments to the bill, not in precise wording, of course, but in idea.

0910

(1) The first is that you provide that the validity of a declaration will require prompt ratification by the Legislature and empower the Legislature to revoke the declarations and any measures adopted thereunder, in whole or in part.

When we know that emergency powers are going to be promulgated at the discretion of the executive—the cabinet—it's very important that there be a legislative involvement as soon as it's possible to get it.

(2) Upon the declaration of an emergency, require an immediate reference to a court of superior jurisdiction to determine the validity of the declaration.

We would say that even if the emergency is terminated prior to the end of the hearing or even prior to the inception of the hearing of the court, the hearing should go on nevertheless, because it would perform two important functions: first, to create a precedent so that subsequent governments will get a better feel for the correct interpretation of the statutory language; and second, because in the event the court ultimately revokes the declaration, even after the emergency is over, that is likely to create some political issues. In our view, when powers of the sort being contemplated are invoked, it is important there be political issues even after the fact.

That is one of the other important purposes that would be served by an immediate reference to the court to determine the validity of the declaration.

(3) Provide that the measures adopted pursuant to such a declaration be neither more intrusive in subject matter nor extensive in geographic area than what is reasonably needed for the requisite protection against the effects of the emergency.

Our view is that this is an important principle that has to be grafted on to all of these undertakings; that it is the minimum power that's needed that is created, and not beyond that. We say "reasonably needed."

(4) Provide explicitly for a judicial power, on a case-by-case challenge, to revoke or reduce any such measure that the government adopts.

This may be implied already, but you will forgive the insecurity of a civil libertarian if we suggest that it be made explicit and not simply rely on what might be implicit.

(5) Where property is commandeered, provide for reasonable compensation.

(6) Where a person is directed to render services: (a) require that the services be essential—the federal counterpart does require that it be essential services and so should the provincial one; (b) provide a defence to refuse the performance of any services beyond those normally required of such classes of persons where there are reasonable grounds to anticipate serious perils to life, limb or health; (c) provide reasonable compensation to persons who are so directed; (d) provide that such compensation be subject to independent arbitration; (e) in the absence of bad faith, indemnify those who cause injuries in the performance of such services.

(7) Remove the authorization for warrantless entry into private property.

I note that in the federal legislation, for both public order emergencies and public welfare emergencies, there is no provision for a warrantless power to enter.

(8) Provide that the liability of "designated persons" for purposes of section 11(3) apply not only for gross negligence but also for intentional torts.

I don't know if it is assumed that when you say "gross negligence" that implies torts more serious than gross negligence, but I'm not sure it does, and that would look, then, like an oversight. Surely, if they are liable for gross negligence, they ought to be liable for intentional torts.

(9) Provide for the government itself to be liable for gross negligence, intentional torts and for ordinary negligence.

(10) Provide that none of the powers can be exercised for the purpose of terminating a strike or lockout or imposing a settlement in a labour dispute.

As I look at the members of the committee, I think I can safely make the assumption that they are a good deal younger than today's presenter is. This presenter's memory goes back to 1988, when the federal emergency powers legislation was enacted. The apprehension that such power might be used to terminate a labour dispute

was a very controversial issue at that time. They provided explicitly in the legislation that this couldn't be done.

The significant thing about reading this is that I'm doing it without my glasses, and that I have to show off about, even if it isn't otherwise relevant.

(11) Delete the authorization for the government to adopt "such other matters as [it] considers necessary...."

We checked both the public order and public welfare emergency components of the federal legislation. There is no such basket clause there and it's hard to imagine why, for provincial purposes, it would be so much more necessary than it is for federal purposes.

(12) Reduce the duration of declared emergencies to be more in line with the practice in other provinces.

I'm advised they are 10 to 15 days in most other provinces that my colleagues were good enough to check for me.

(13) Provide that the government must publish periodic reports during the emergency as well as at the end and specify the kind of detail that such reports, at least at a minimum, should contain: what categories of persons have done what to whom in respect of what interests, where, when, how.

This contemplates that there may well be some emergencies that will be extended and extended and then go on for long periods. The public should not be deprived for such long periods of some kind of government accounting in the form of this kind of report, so that you might provide a number of days or whatever at the end of which they have to report, or if the emergency terminates earlier, make it whichever is earlier, or whatever.

(14) Provide for the independent auditing of the emergency powers and their exercise, together with interim reports during the course of the emergency and a comprehensive report shortly after the termination of the emergency.

Where extraordinary powers are going to be exercised and they are promulgated by government in this way, it's important that there be some way of providing an additional mechanism for accountability. We recommend an independent audit, something, if I could use the analogy, of the role that the security intelligence review committee plays with respect to CSIS at the federal level; that is, an agency independent of government with ongoing access to the key materials, records and facilities, to keep looking at what's going on and report on it afterwards, with no decision-making power—a power to disclose and propose and perhaps even expose, but not to decide. The idea would be that that acts as an extra check when powers of an exceptional character are being exercised.

All of which is, as always, respectfully submitted.

0920

The Acting Chair: That's your written. Do you have more to add to that, Mr Borovoy, or did you want to start the comments?

Mr Borovoy: I'm happy to respond to questions or comments.

The Acting Chair: Thank you. We'll start with Ms Broten and then Mr Zimmer.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Thank you very much for your thoughtful presentation and attending with us today. Certainly throughout the summer and in almost four weeks of hearings we've had on this, the committee has struggled with what is the balance in terms of protecting civil liberties and giving the powers to the Premier and the province that we might need in these extraordinary circumstances.

When you made your first comments, you commented on a piece of legislation. I just want to clarify. You must have been making these comments with respect to a draft proposed bill that had been drafted by the Attorney General's office that has been part of these proceedings.

Mr Borovoy: I'm not able to identify it that way, but there is a bill that I've seen.

Ms Broten: OK. Just for your clarification, that's not a bill that this committee has produced. That was something produced within the bureaucracy that was provided to us during the context. But it serves as a discussion point nonetheless.

Mr Borovoy: You may be wise to absolve yourself of responsibility for it.

Ms Broten: I want to focus specifically on number 2, "Upon the declaration of an emergency, require an immediate reference to a court of superior jurisdiction to determine the validity of the declaration."

I come at this both as someone who is now part of the government and as a former litigator. My first reaction was that that in and of itself won't be a quick process, having a reference go to a court. I wondered if we could just have a little dialogue about number 2, because it causes me some concern. We're in the context of an emergency. The Premier of the province would have declared an emergency. We would be dealing with a crisis already in the province. At the same time, we're going to have an immediate reference going to a court with this parallel proceeding. It causes me some concern as to whether it creates more harm than good to have this second proceeding ongoing right in the middle of a crisis, diverting people's attention and diverting media attention when we need citizens of the province to pay attention to whatever the emergency is.

I wonder if we could just talk a little bit about this one, because I think the political ramifications for a government of declaring an emergency will exist, if it shouldn't have been done, regardless of having a declaration go to a superior court judge, who may or may not be known to the citizens of the province.

Mr Borovoy: I suppose I have faith in the ability of the population of Ontario to walk and chew gum at the same time. There will be lots of things happening in the news even though there is an emergency, and the rest of the world isn't going to grind to a halt. This provides an ongoing check and it gives the government another incentive not to use powers like this unless they really are needed.

Of course, one always has to remember, and I suppose it's the role of someone like me to say, that there are going to be governments beyond the one in Ontario

today, and you never know how others might want to use powers like this. The idea is to provide the most reasonable checks you can envision. The kind of check this is doesn't interfere with the functioning of the emergency, doesn't stop anybody from doing anything, but it reminds them all that there's going to be some accountability for it.

Ms Broten: OK. With respect to one of the other ones that you made mention of, number 11, "Delete the authorization for the government to adopt 'such other matters as [it] considers necessary...,'" if there is one thing that we've heard throughout these number of weeks, it's that we can't anticipate what the next provincial emergency will be. You would know that we've had two provincial emergencies in the history of the province, and that's something, I think, that is important also to acknowledge, that many other emergencies happen and they're not declared provincial emergencies. So we had the blackout and SARS.

Many of the experts who have come before us have said, "You can't anticipate what the next emergency will be." We couldn't anticipate some of the hurdles we would face during SARS; for example, people breaking quarantine because they were concerned that they would lose their jobs, and there was no job protection during SARS. So from our perspective, I guess, giving you a right to do other things that you need to do is important because we don't know that we can list out everything that we would need the province to be able to do. I wonder if you want to comment on that.

Mr Borovoy: I guess the first thing I would say is, please consult your federal counterparts about that, that enacted legislation that doesn't provide for this.

In saying this, I appreciate that there is an ongoing tension. There's always the fear, "Maybe we haven't thought of everything." Of course, when one looks at that panoply of powers, it's hard to imagine what you haven't thought about, because, you see, when you set out all kinds of powers like this, though you are aware of possible emergencies that might take place, those powers go well beyond any that you've already imagined are going to take place. In other words, the powers are not necessarily limited to those emergencies that you've hitherto imagined. The powers surely go beyond that.

That being the case, and in view of the federal experience, I don't think there's that much to lose by deleting this kind of power, remembering also that if you haven't anticipated—and, as I say, it's hard to imagine that you haven't—the Legislature can be called, and if it's a genuine emergency the Legislature can act pretty quickly if there really is something that you haven't thought of in this panoply of powers.

A friend of mine once put it in a very interesting way when he described the security mentality. He said, "It's not enough to put on a belt and then suspenders. You also have to walk around holding your pants up." In a sense, I fear that's what that clause will do, but it could create a tremendous potential for abuse, as I'm sure you appreciate.

Ms Broten: Just two further points on this exact matter. There are some who would say that that power is implied in many of the statutes that don't have it explicitly, given the obligation imposed on a state to act etc. We've also had two witnesses before us, David Collenette and Tony Clement, who both managed crises that we can think about in the last number of years. They said that from their perspective they worked with their deputy ministers and within their structure and made decisions to do what it took and what they needed to do, regardless of whether they actually thought they had the authority to do it, and they would take the political ramifications later. I guess if there's a provision—

Mr Borovoy: I hope you won't be so ungracious as to invite a comment from me on that.

Ms Broten: I would like a comment on it, simply because if the provision isn't there, I guess what those two individuals who were in these emergencies tell us is that they took what they needed to manage the crisis in the way they thought it needed to be managed, acknowledging they would have to respond to the people of the province or the country.

Mr Borovoy: Given that all life is a matter of determining which of the competing risks you'd prefer to live with or that you think would make life the least bad, I prefer that risk in general to this risk. Yes, I can understand that often some additional leeway can be inferred from a lot of the powers that you've already got in there and that exist in other statutes. That I find less troublesome than this kind of explicit mandate to do who knows what.

Ms Broten: Thank you very much for your comments.

0930

Mr Zimmer: Thank you, Mr Borovoy. I too, like Ms Broten, am a lawyer. I've followed your career over these many years and have the greatest of respect for the contribution you've made to civil liberties in Canada.

Mr Borovoy: Now I'm afraid of what's coming.

Mr Zimmer: I had questions surrounding the issue of the intervention or the role of the courts, as did Ms Broten, under points 1, 2, 3 and 4 and also the residual powers question under point 11, but Ms Broten dealt with those and my questions have been answered.

My questions now revolve around three areas. Let me start with point 6, the mandatory recruitment and the limits on the tasks that can be required under mandatory recruitment. In point 6(b), you proposed a limit on what one can be ordered to do under a mandatory recruitment provision, where there are reasonable grounds to anticipate serious perils to life, limb, health and so on.

Is it not inherent, though, in the very nature of an emergency, for instance the SARS crisis or a nuclear meltdown crisis, where it's inherent in the crisis and therefore by definition you can't get away from doing dangerous tasks, and if that's so, how do you provide for or who does the dangerous tasks that are necessary in combatting an emergency? How do you resolve that tension?

Mr Borovoy: Of course, we were careful to say that those classes of people who are normally required to do those dangerous things could not avail themselves of a defence like this. This contemplates that those kinds of people of course will continue doing those things, but to the extent you try to commandeer others to go into a burning building, let's say, something of that kind, they are entitled, in our judgment, to say no to that and to have a defence.

You can't commandeer, you cannot conscript people to do things like that, unless of course you have a much different kind of situation than this contemplates, war or something like that where you might have a draft, but subject to that sort of thing, say no. You will have lots of volunteers. You will have people trained to do those things who know that's part of their job and there will be lots of support functions you may be conscripting labour to do. That you might be able to do because that won't necessarily be dangerous, but it's awfully hard to say you can make it an offence for a person not to go through a burning building to rescue another person.

Mr Zimmer: You used the situation of conscription in the case of war. If there was a crisis such that it put the province or the nation at real risk in an extreme crisis, would you see provision for mandatory recruitment of people to do dangerous things in a really extreme extreme?

Mr Borovoy: I don't like to show off, but I remember the Second World War. We had conscription. Remember, "Conscription if necessary but not necessarily conscription." But we had it and certainly other democracies had it, but that kind of thing, in my view, if you're talking about emergencies of that character, you'd call together the Legislature or you'd have the House of Commons sitting. This couldn't be done by unilateral promulgation by government.

Mr Zimmer: My next question is on point 7, the removal of the authorization of warrantless entry. There's a tension there again, to use the example of the burning building, where firefighter officials or other people may have to enter private property to shut off the gas of a house in the neighbourhood so that the rest of the neighbourhood doesn't go up in smoke. I was a little surprised at the vigour with which you've argued against warrantless entry. What would you do in a situation like that? The burning house—somebody's got to get in and shut down the gas to prevent the neighbourhood from going boom.

Mr Borovoy: We had to face this during the time of RCMP wrongdoing, if you recall the controversies around that. I can recall the argument was made, "Well, what if a building was going to blow up or something?" I remember saying, "There's no way in this world that you have to run downtown to get a warrant first in a situation like that." In those situations, people facing that sort of urgent situation would very likely be able to avail themselves of the common law defence of necessity in those kinds of situations. I don't really think that's a problem in that sort of situation. That's why I say I'm bolstered in

this by the fact that, for public order and public welfare emergencies, the federal emergency legislation does not have such a power.

Mr Zimmer: My last question has to do with not allowing the termination of a strike or lockout in an emergency crisis. I'll just put this hypothetical to you—well, not a hypothetical. There's another SARS-type epidemic rapidly moving through the population, and at that time the hospital workers, nurses and doctors and so on happen to be on strike. How would you deal with that situation where the hospitals and the health care people have to be—

Mr Borovoy: You may have to commandeer their labour, but you don't use that to come up with a settlement for their strike.

Mr Zimmer: Would the commandeering of the labour in a strike situation be all right in your scenario as long as it wasn't—

Mr Borovoy: The labour may have to be commandeered in an emergency, but that doesn't become an instrument to dictate the settlement in the strike.

Mr Zimmer: In effect, if you will, there's a pause or a suspension or a time out during the strike period. The crisis is dealt with, and go back to strike mode.

Mr Borovoy: Then we can go back to fighting each other.

Mr Zimmer: Thank you very much. It was very helpful.

0940

Mr Kormos: Please put that question to Goldenberg, Casselman and Ryan when they're here at 11.

Mr Borovoy: I think I've been a witness to some partisan byplay here.

Mr Kormos: Of course.

You made reference and recommend, can I call it, judicial oversight of governmental action. Why, then, wouldn't you propose putting the matter to the court in the first instance? The cabinet room, an unattractive place at the best of times, is surely no more efficient, no speedier than an ex parte application. So why would this committee not consider a statute that preconditions and then utilizing the court in the first instance?

Mr Borovoy: I don't have any objection to governments governing. I think that's what they're elected to do. They're elected to provide these kinds of protections for people, and I think it's perfectly appropriate that they do it. That's why I say they can go on and do it, and you could have a court hearing occurring even simultaneously. But governments still have to act.

Mr Kormos: The comments on warrantless entry are certainly appreciated, especially your explanation, because over the last several weeks it's been raised persistently—the burning building, the gas main that's ready to rupture.

On the reference to conscription, you should know that many of the professionals—firefighters, among others—who attended here indicated they don't want people pressed off the street to assist them. They want and need trained personnel they can rely on in the context of the kind of teamwork they perform.

Your addition to liability for ordinary negligence—you know that almost every statute that comes before this Legislature has that section in it indemnifying government. You propose including liability for ordinary negligence as well as intentional torts. Is that just with respect to this legislation, or would you propose that for all government legislation? I put this in the context of things like the sex offender registry, which I supported, but I recall very clearly in committee expressing concern about government liability being limited only to gross negligence, in view of the incredible level of care that a government should be using before putting a name on a sex registry, because of the implications.

Mr Borovoy: I think I'm probably best off not taking your invitation to try to figure how these principles might apply in other situations. If I may, I'd prefer to jump off those bridges when I come to them.

Mr Kormos: I was hoping to have a card in the back pocket for the next—we'll simply have to put it to you in the committee hearings on the next subject.

Mr Borovoy: So now I'm the ungracious one.

Mr Kormos: I'm disappointed, but disappointment is my middle name. I have a life of disappointment and pain.

Mr Borovoy: And I know it will take me a long time to live that down.

Mr Kormos: When you talk about commandeering property, would you put limits on the types of property? What are you speaking of? There's been talk about the fact that there's a private sector out there, the business world, that has things like trucks, firefighting equipment, labs and so on—all sorts of things. But then there's also—you know the Hollywood movie with Mel Gibson pulling over a car and flashing his badge, saying, "I'm taking this car."

Interjections.

Mr Kormos: I'm serious. That's what people think about where I come from, somebody flashing a badge and saying, "This taxi is mine now." Then, of course, they riddle it with bullets and roll it over half a dozen times.

What are you talking about in your sense of commandeering? You talk about fair compensation and an arbitration system to guarantee that. But what's your sense when you talk about commandeering? Are there limits in that regard? You put limits on conscription, on pressing people into service, which are not unreasonable. What about commandeering property?

Mr Borovoy: I could be persuaded that there might be some distinctions to draw. Off the top of my head, I might be hard put to spell them out for you. But what this recommendation is designed to do is say to the legislative committee that may be preparing a bill, "Provide for reasonable compensation for the commandeering of property." There may be some legitimate distinctions to draw as to how to commandeer, for what purposes, for how long—questions of that kind that I couldn't possibly get into—but this was to remind you, if you like, that there is a job to do about compensation and there ought to be some right to it included in the bill.

Mr Kormos: It's contemplated that a bill might include—in your instance, you're proposing judicial oversight, but also legislative oversight: that at some point the matter has to be referred to the Legislative Assembly. Again I agree with you. The Legislature can be called back rapidly in a province like this.

What do you say to the proposition, for instance, of somebody saying the matter must be voted on in, oh, one sessional day and thus inherently restricting debate on the issue, knowing that people—politicians and political parties—prolong an emergency or unnecessarily abbreviate it at their own risk, and they're very conscious of that? I've witnessed this Legislature responding very quickly any number of times, quite frankly out of the self-interest of the respective players, because they know that not to have done that would have carried huge consequences.

Mr Borovoy: There are various ways that that might be done. One is that you might say that after a given number of days the declaration will lapse unless the Legislature has ratified it. That's one possible way you might do it. Just figure what a reasonable number of days might be, anticipating debate and the like, and say that if the Legislature doesn't act within that time—given that the government would have the power to shorten debate, but every time that's done, it creates some political consequences as well. The idea is to make the declaration of emergency powers a politically vulnerable exercise. That serves to try to keep it all within legitimate boundaries.

Mr Kormos: There are some who might advocate that among the powers the government—either the Premier or the Lieutenant Governor in Council—ought to have after the declaration of an emergency is the power to require that persons or bodies disclose information necessary in order to prevent, respond to or alleviate the effects of the emergency, which of course would include private information that would normally be protected, like personal medical information. Some would suggest that an appropriate counterbalance to that would be to ensure that that information is destroyed as rapidly as possible once it's utilized for its intended purpose.

What do you say about the proposition that otherwise protected information, without there being a search warrant issued, for instance, as would happen—it happens all the time. What do you say to that proposition?

Mr Borovoy: I could be quite persuaded that to whatever extent information is collected in contravention of the current statutes, it be disposed of. I'm also hopeful that insofar as that power is concerned—it is a disquieting power—that shores up the other recommendation I've made that you write into any such bill a minimization requirement, that they intrude no more than is reasonably needed. That would help also.

0950

Mr Kormos: But in contrast to confiscating property, such as a police officer seizing a taxicab to engage in a high-speed pursuit, which can be compensated for monetarily, clearly and cleanly, you can't adequately

compensate for the revelation of private information, in many cases, so as to nullify the impact. It's a far more onerous, in my view, intrusive seizure than taking a car or an airplane or a dump truck. Because you have here the obligation to submit the declaration of the emergency and, I presume, the powers being declared under it to judicial review after the fact—and I appreciate your comments—what powers or rights would you give to an individual member of the community, who might become aware of the potential of himself or herself being at risk of having personal information disclosed, to challenge that in such a way that they can prevent it; in other words, before the fact rather than after the fact, when the genie's out of the bottle?

Mr Borovoy: There are two types of judicial review that are contemplated here. One concerns the declaration of the emergency itself. That, we say, should be an automatic reference. The other kind of judicial review is that at any time, on a case-by-case basis, there should be an explicit recourse to the courts for anyone to challenge the extent to which, in that person's view, the measure adopted by the government or the action taken under it exceeds the statutory authorization for it. That could be done at any time. One way, of course, is that people could attempt to get an injunction to restrain further use of those powers.

Mr Kormos: That, of course, relies upon your comment that the power should be no more extensive, in geographic area or in subject matter, than necessary.

Mr Borovoy: Or no more intrusive in subject—

Mr Kormos: The difference between a cabinet room and a courtroom is the private versus public nature of the discussion, recognizing the court's ability to keep certain information private. Obviously, what happens in a cabinet room and the facts that are being relied upon don't have to become public information, don't have to become public knowledge. Nobody in cabinet is obligated, under any stretch of the imagination—as a matter of fact, to the contrary—to disclose those things. So how, then, does a member of the community become aware of a plan, for instance, to capture or seize personal information, private information, that could well be beyond the legislative scope? How do they become aware of that in sufficient time to bring the application for an injunction that you talk about?

Mr Borovoy: It wouldn't be able to act prior to the measure being promulgated, it wouldn't be able to do that, but might well be able to act long before his or her own particular information is invaded. Even if they couldn't get into the cabinet room and try to restrain the government, once the measures are promulgated, then it's a public act and everyone can look at it. If somebody thinks one of those powers has gone too far, they can attempt to get an injunction. In the meantime, the government would be free to act in the usual way, or in the exceptional way, but it could be subject to that kind of check.

Mr Kormos: The then Attorney General McMurtry report, which is a couple of decades old now and which

contemplated extraordinary powers, statutory powers, in the event of an emergency, reached the conclusion that the existing law and the common law were sufficient to meet the needs of the state and, furthermore, at least suggested that one should be careful what one wishes for, because to start codifying these things could create more problems than, indeed, remedies. We haven't heard any updating of that. I don't know whether he's changed his mind in the decade since he signed off on that report. Do you have any comments on that?

Mr Borovoy: That was the point of my initial remarks, that all this is based on the assumption that the need for this has been demonstrated. As I say, I'm aware this need has been alleged, and by some experts. I don't know it has been demonstrated. I haven't seen the documents. It may be that I haven't seen enough of them. I'm not sure. But I would say that should be a prerequisite to all of this.

Mr Kormos: That's very important, because I'm simply not sure we have clear evidence. I think the debate is certainly far from over about whether or not the position of McMurtry is still valid.

Mr Borovoy: It would be helpful to have a compendium of the powers and what is anticipated, and then look at it and everyone has to make that judgment. I know some experts have said they don't have it, based on their experience in previous emergencies, but that isn't the same as a demonstration of it. I think that ought to be a prerequisite.

Mr Kormos: Thank you kindly, sir.

Mrs Liz Sandals (Guelph-Wellington): I'd like to talk about some of these powers, and then sort of an overriding concern I would have. To follow up on the conversation you were just having around the collection of personal information, the scenario I would be concerned about with an ability for judicial injunction is in the case of a pandemic situation, where perhaps there was a concern that someone may be carrying whatever the disease is and is continuing to go to work, and the need to get at what is certainly private medical information to determine whether that person is in fact a carrier, and therefore to go from there as to whether they need to be forcibly quarantined. That's not something, if you're infecting a number of other citizens, where I would like to have an injunction while we decide whether one can get at that private medical information, which normally the state would not have access to.

Mr Borovoy: That's why I said right along that all this presupposes that government continues to act. An application can be made for an injunction. This is, of course, a risk you run all the time, every day, that there may be something one group of citizens thinks is terribly important, but it could be subject to judicial interference if, according to the court, whatever the government is doing is not according to law. That's what this is designed to do.

Now, if you were envisioning a pandemic, the question is, do you trust the courts to make sensible judgments, to balance the considerations of law against the

urgency, or don't you? I don't want to put it quite that starkly, but I suppose that's what it comes down to. This is a risk we normally live with. It seems to me that's a sensible way to strike the balance. It's highly unlikely that a court is going to interfere in the middle of a pandemic. On the other hand, you could have situations where there is excessive exercise of some of these powers. Governments have been known to do that. Police have been known to do that. This provides a check on it, some kind of restraint.

Mrs Sandals: Perhaps we could go through a couple of the other powers that have been flashpoints. I understand a lot of these things are sort of instinctively offensive to you, so I'm going to go at it from the point of view of what is the less offensive. I think at the idea of blanket mandatory conscription you have all sorts of alarm bells going off. If, instead, that were stated more in the vein of people can be directed or required to do that for which they are reasonably qualified, is that a less offensive way in which to direct people, rather than willy-nilly mandatory conscription?

1000

Mr Borovoy: The answer to that is, of course. The bill that I've seen does do that, if I recall correctly. But I'm talking about something beyond that. It's one thing to be qualified to do it; it's another thing when it's particularly dangerous for a person. I did not say there couldn't be a power to conscript. I just want to give people a defence to being conscripted, if what they're asked to do is beyond their normal range of activity.

Mrs Sandals: But if the thing which they are qualified to do is something in which you may inherently face health risk or danger, then—

Mr Borovoy: But there's a difference, you see, between "qualified to do" and being especially trained to do or the kind of thing that's normally expected of your occupation. We expect doctors to run some risks of being exposed to contagious diseases. We don't expect ordinary citizens to run that risk. So it's one thing to say that doctors have to do this; it's another thing to say to an ordinary citizen—yes, he might be quite qualified to do something, but it may be awfully dangerous. I'm simply saying they ought to have a defence against doing what's dangerous.

Mrs Sandals: If I can look at another one that is quite contentious, which is the entry without warrant, one of the contexts in which that has consistently come up is within the power to evacuate, so that in order to evacuate, you may need to enter some premises in order to carry out the evacuation. Would you feel more comfortable if one was to be explicitly citing the power to evacuate? As you suggest, then, there may be inherent in the power to evacuate an entry authority, but not to give the blanket entry without warrant.

Mr Borovoy: My discomfort level would be reduced to whatever extent it is possible to narrow powers and be specific about the range of possibilities. Of course, the more you do that, the less risk there is of abuse. There is a countervailing risk that I'm quite aware of, of course.

Again, it's a matter of striking the best balance. Of course, the more you can narrow the exercise of these things, the better.

Mrs Sandals: Finally, because, unlike all my colleagues who have spoken, I'm not a lawyer—

Mr Borovoy: Don't show off.

Mrs Sandals: Your point 8, about intentional torts, is a total mystery to me. Can you explain that one in lay language?

Mr Borovoy: Sure. If X assaults Y, that's an intentional tort. It may be a criminal offence, but it's also something for which the assaulted person could sue in damages. All I'm saying here is, if you're saying these people should be liable for gross negligence, why not for intentional misdeeds as well?

Mrs Sandals: Then you would need to prove intent of misdeed.

Mr Borovoy: Oh, sure. But all I'm saying is, if you provide a compensable remedy for one, why not the other? I would have thought that was the intent and this was just an oversight, but I don't know.

Mrs Sandals: We're probably running short on time here.

The Acting Chair: Yes. Anyway, Mr Borovoy, thank you so much for the colourful and insightful contribution you've made.

Mr Borovoy: I noticed which adjective you put first.

The Acting Chair: As always. It is much appreciated, because it's put a lot of the questions we've been grappling with into better focus for us so we can hopefully come up with better decisions. So thank you very much.

COMMITTEE BUSINESS

The Acting Chair: Members of the committee, the next item on the agenda between 10 o'clock and 11 o'clock is delegated to report writing. Where do you wish to begin with report writing? Is it on the discussion about drafting the bill or on the actual report writing itself with Margaret Drent?

Mr Zimmer: How about a five-minute recess?

Mr Kormos: We haven't heard all of the submissions. We only just heard Mr Borovoy this past hour and we still have three very important submissions to be made by representatives of SEIU, OPSEU and CUPE. Unfortunately, we weren't able to hear from firefighters yesterday, and I have concerns as well about exactly what firefighting group it was that was invited, because I didn't recognize it as the Ontario Professional Fire Fighters Association.

I am concerned about embarking on report writing or legislative drafting—you know I made these comments—before we've heard and contemplated all of the matters that are going to be put before us. Mr Borovoy today articulated an incredibly fundamental consideration, and that is whether or not the McMurtry observations of years ago now, admittedly, are still valid and whether or not they're valid to the extent that they negate the need to introduce legislative change. I appreciate this

isn't report writing, but certainly that consideration is critical to report writing as well.

The Acting Chair: Further comments?

Ms Broten: I think we all acknowledge what Mr Kormos has said. We haven't finished hearing everyone and we are going to continue to do that. However, with respect to the firefighters yesterday, I certainly think many of us queried which group had been invited and why there was not an attendance of that group. I think we wanted the professional firefighters association; I think it was the volunteer firefighters association that ended up being invited and then did not attend. I think that's a common concern we all had. We noticed it yesterday morning.

With respect to where we are at, I think we have an hour now. First of all, if we're doing some report writing, we should be in closed session as we have been throughout these proceedings during that report writing. I would propose we do take a short break, come back in closed session and have discussions about the witnesses we have heard and use the time promptly and prepare for the next witnesses we'll be hearing from at 11 o'clock. I think we can pose some very thoughtful questions to them.

Mr Kormos: I appreciate what Ms Broten says and I thank her for sharing my concern about which group of firefighters would have been speaking here yesterday.

Now she raises yet another matter, and that is the matter of in camera versus on the record. I have the same view with respect to report writing by this committee. This is not the public accounts committee; this is a far different exercise. I have the same concerns about in camera proceedings with respect to the aspect of report writing, at the same time saying that report writing is grossly premature. Ms Broten knows, based on her professional culture, that no determination of facts should occur before one has heard all of the submissions; it's a paraphrase.

Ms Broten: I've started writing my factum many times before the trial has concluded, though. You have to get going.

Mr Kormos: Well, wait a minute.

Ms Broten: You acknowledge that, Mr Kormos. We have a November 1 deadline.

Mr Kormos: So (1) I'm not going to participate in in camera, and (2) it would be premature, in any event. Critical witnesses like Leah Casselman, Sid Ryan and Marcelle Goldenberg haven't been heard from. Mr Borovoy has very effectively put forward one of the fundamental considerations, and I'm not sure we've begun to address that or acquired the information necessary to allow us to address that.

The Acting Chair: What is the wish of the committee?

Ms Broten: Perhaps we can take a five-minute break?

The Acting Chair: OK, take a five-minute break and then return.

The committee recessed from 1010 to 1024.

The Acting Chair: I bring the committee back to order. How does the committee wish to proceed?

Mrs Sandals: I would move that we go into a closed session.

The Acting Chair: All in favour? Opposed, if any? Carried. We're now going into reporting stage, as indicated, in a closed session.

The committee continued in closed session from 1024 to 1103.

ONTARIO PUBLIC SERVICE
EMPLOYEES UNION
CANADIAN UNION
OF PUBLIC EMPLOYEES,
ONTARIO DIVISION
SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1.0N

The Acting Chair: We'll resume the sitting of the justice policy committee on reviewing the emergency management statutes of the province of Ontario.

We have scheduled at 11 am the Canadian Union of Public Employees, Sid Ryan; Service Employees International Union, Marcelle Goldenberg; and Ontario Public Service Employees Union, Leah Casselman. If you could take a seat.

The format, for our guests, is informal. In essence, it's a combination of a round table panel exchange of ideas and views. Usually, with other panels, we've had presentations by the deputants and then after the presentations there are comments and questions by members of the committee. You can also, at that point, interject or ask to be heard, or you can respond yourselves to a comment or suggestion made by a member of the committee. It's a bit more fluid than the normal committee proceedings. This is all recorded in Hansard. You can begin by identifying yourself for Hansard, and we can proceed. We have an hour for this session.

Ms Leah Casselman: Thank you very much. Good morning. I'm Leah Casselman, president of the Ontario Public Service Employees Union. With me today is Tim Hadwen, our general counsel, so you'll have somebody to talk to. I'll have CUPE introduce themselves when they make their comments.

The Ontario Public Service Employees Union comprises 100,000 members in hundreds of occupations. To name just a few, they are ambulance paramedics and dispatch officers, hospital professionals, public health nurses, psychiatric nursing assistants, psychologists, research scientists, rehabilitation counsellors, environmental officers, air engineers, radiation technicians, highway equipment operators, cartographers, correctional service officers, forest firefighters, steam plant engineers, telecommunications clerks, farm product inspectors, meat inspectors, fire safety officers, emergency health service investigators, transportation enforcement officers, pesticide control officers, public health inspectors, security guards, social and crisis workers, and many other administrative and operational workers who keep public safety operations across Ontario from falling apart. I doubt

whether another organization speaks for such a comprehensive range of occupations concerned with the prevention and resolution of public emergencies.

These front-line workers are spread across the Ontario public service, our hospitals and community colleges and throughout hundreds of agencies in the broader public sector. They are part of the first line of defence that protects the Ontario public from the next Walkerton tragedy, the next SARS epidemic, or cleans up after a train derailment, a truck explosion or, heaven forbid, an act of bio-terrorism. They perform very important work, but they are often overlooked in favour of the managers, the experts, the pundits and the bureaucrats who direct the operations. But in reality, we all rely heavily on the front-line energy and experience of our members to get the actual job done.

That's why we found it curious, but perhaps not unexpected, that it was only as an afterthought to invite the union representatives of these vital emergency workers to address your committee. This attitude is typical of governments who have taken our services for granted, that have cut our numbers, slashed programs, divested and privatized our work. They take public service workers for granted—until they really need us, of course. In an emergency, they sing our praises.

I'm not exaggerating when I say hundreds of OPSEU members have gone through hell to defend our communities, especially those who helped safeguard the public through the SARS episode. How many of the people in this room wore a mask for a month, or perhaps should now? How many of us were quarantined for weeks at a time and kept away from our family and friends?

I also want to remind you that it was our members in the Ontario Clean Water Agency who were called in to resolve the Walkerton situation—this, after years of disrespect for the agency's staff and when their work was offered for sale to the lowest bidder. Thankfully, OCWA had not yet been sold off and was still in the public sector when Walkerton occurred, or else the government would have had to go cap in hand, and hand in wallet, to the private sector. Because history shows that it is the public sector that can be relied upon to come to the rescue, and it is the broad band of dedicated, front-line public employees, united in a web of fail-safe mechanisms, checks and balances, who work to protect public safety and prevent calamities from happening.

But what we have in Ontario today is far from this ideal. If the new government wants to distance itself from the public emergency disasters of the past, if it intends to amend legislation to more effectively plan for emergencies, it had better start taking public sector workers much more seriously.

OPSEU is deeply concerned that in a rush to be seen to be improving emergency preparedness, to pull together a bill by November, you're missing the big picture. Unless this government comes to grips with what it will take to rebuild Ontario's vital public services, your committee's work is going to be fundamentally flawed.

1110

I submit that to help prevent the next disaster it is imperative that this committee recommend an ongoing, comprehensive dialogue between the province and all the unions that represent workers engaged in public safety issues. Such a dialogue would be aimed at kick-starting a meaningful joint planning exercise to rebuild Ontario's capacity to prevent emergencies and respond effectively when disaster does strike.

It would also be useful if the members of this committee got word to the finance minister before he dives too deeply into his line-by-line assessment of which public services are expendable in his next round of cuts and proposed privatizations. As I've said before, and especially in the context of emergency measures, if a public service in this province could possibly be cut, it was already cut by the previous government. We are now down to the bone.

We're supposed to now be a full year into the rebuilding process promised by the McGuinty Liberals, yet the last budget cut services and staff in at least 15 ministries, with wider repercussions in the broader public service.

If we are to prevent another disaster, can we do without proper staffing levels and adequate equipment? Can Ontarians afford the risk of having even more public programs delivered by profit rather than by the public service?

Time does not permit me to fully outline our views on the legislative reforms needed to help overcome systemic safety problems and ensure that more emergencies are prevented or addressed effectively while still respecting the hard-won rights of employees, but I want to make a few brief suggestions. We have printed materials with us, and hopefully we will have a productive discussion over the next hour with you in relation to some of these ideas.

I want to draw your attention to our letter, dated August 25 of this year, to Justice Archie Campbell on legal lessons learned from the spread of SARS. The recommendations set out in this letter can effectively address shortcomings in emergency planning and also protect employees' interests in the workplace. I would urge the committee to interpret the recommendations as being instructive for necessary reforms to legislation governing the Ontario public service and the broader public sector.

The letter addresses:

- serious consequences of the failure to consult with unions prior to and during emergencies;
- the requirement for comprehensive legal protections for health workers;
- the need to protect employees' rights and collective agreements during emergencies;
- avoiding the circumvention of employers' occupational health and safety obligations;
- the need for detailed emergency workplace plans that are negotiated with unions;
- the need for consistent provincial coordination of health emergencies rather than arbitrary directives made by individual employers like hospitals, for example;

—protection from liability for employees for good-faith conduct required of them during emergencies;

—the need for legislated whistle-blower protection for employees who, in good faith, raise concerns about how a public health or safety risk is being addressed;

—necessary limits to the casualization of workers, which threatens the consistent delivery of many critical public services. You'll recall the part-time nurses and other hospital workers who worked in three or four different hospitals because they couldn't get a full-time job anywhere and were restricted from getting that income because of the SARS epidemic.

We also proposed amendments to the related legislation, including the Emergency Management Act, the Health Protection and Promotion Act, and the Public Hospitals Act.

There's no sense amending the Emergency Management Act if the province fails to also address the staff shortages and cuts in crucial areas of public services directly related to emergency services. There are chronic staff shortages at 11 provincially operated central ambulance communications centres and at the medical air transportation centre, where the new-hire retention rate is just 30%. Try managing a regional health crisis or a major disaster with understaffed dispatch centres.

After the Conservatives laid off 150 permanent meat inspectors, the provincial cabinet was told in 2002 that meat products cause 58,000 food illnesses every year. Meat inspectors, overworked and under serious stress, have a turnover rate of over 30%.

Public health labs have been aggressively starved after the layoff of scientists responsible for researching infectious diseases, superbugs and chemical toxins. Because of this, it took two years for Ontario to respond to the West Nile virus.

Recruitment and retention of hospital professionals—not just nurses and doctors—is the top strategic concern facing health organizations in this country. Our members in the labs, wards and clinics of public hospitals are pivotal when it comes to dealing with emergencies.

I also refer you to the OPSEU/ONA Joint Report on Health and Safety Matters Arising from SARS. This document shows the far-reaching chronicle of troubling inadequacies and inconsistencies in how health care employers responded to SARS. It offers important lessons about sharing vital information and the protection of employees during emergencies. We hope the justice committee will heed its many recommendations, including:

—necessary changes in the operation of the provincial operating centre;

—the need for properly functioning, proactive and accountable health and safety systems within the hospital sector;

—measures to overcome the frustrating and dangerous approach taken by the Ministry of Labour which, during SARS, backed away from its role of enforcing the Occupational Health and Safety Act and its regulations;

—enhanced Ministry of Health and Long-Term Care funding to cover improved infection control programs and related training in hospitals.

To sum up, we're tired of saying, "I told you so." We're tired of saying that. We've said that for the last 10 years. We'll continue for the next four if we have to.

It is time for decision-makers to respect and incorporate the wisdom of the front line. Our members, if consulted, can make a huge difference. In fact, during the SARS crisis we had to step up and fill the void left by management, because we put people first. Fine-tuning emergency legislation is a small part of the problem. Far more pressing is the critically weak state of many emergency and support services. Unbridled enthusiasm for privatizing public services is going to haunt the province again someday, just as it did with private laboratory services at the time of the Walkerton water disaster.

We have yet to experience the full implications of nefarious use of confidential data that has been off-loaded or sold to the private sector. It is frightening to contemplate the ongoing marriage of understaffed, underresourced front-line services with private sector management of sensitive government data.

And how does privatized road maintenance fit with public safety, especially during an ice storm or a major blizzard? What is the impact on emergency management planning of privatized air ambulance services? More than 100 experienced paramedics and pilots left the public service when that brilliant move was made in 2001. And just this week—a year in—the Ministry of Transportation eliminated a number of positions in its road user safety division. These layoffs were done in the name of "managing fiscal challenges," as the ministry put it. With hundreds of people dying on our highways every year, their priorities seem to be a bit skewed.

This government already has one wheel in the ditch, and the primacy of public health and safety demands that it get back on track. I submit that it's easy to hit the ditch when cost-cutting is the primary driver. I submit that "fiscal challenge" cannot continue to be the driver when it comes to protecting the public from disaster and death. Government and public sector employers need to rethink the degree to which the business model has invaded so many senior management offices.

Our collective capacity to protect the public also relies, in part, on ensuring there is strong institutional memory of how to handle a crisis. Institutional memory, consistent safety planning and joint committees reviewing safety measures are all seriously compromised by the history of cuts and the trend to a high turnover of part-time, casual public sector workers.

More than just better organization and communications is necessary when a crisis threatens. We need experienced staff to do the job and to be there when the chips are down.

Thank you very much for listening.

The Acting Chair: OK. The next presenter.

Ms Risa Pancer: I'm Risa Pancer. I'm a lawyer with the Canadian Union of Public Employees. I'm here

representing Mr Sid Ryan. You have been given a letter from Mr Ryan today. I'm briefly going to highlight some of the points in that letter and will also be able to address some of the issues you've raised. I'm here also with Judy Wilkings, who is the legislative liaison with the Ontario division office of CUPE.

1120

Mr Ryan isn't able to be here, given the short notice we were given for this consultation. He had another obligation today. In addition, given the short notice of this, we were unable to consult with our stakeholders in the CUPE membership on this matter.

CUPE is the largest union in Canada and represents 200,000 employees in Ontario in all types of work: health care, education, municipalities, libraries, universities, social services and emergency services and transportation. We represent white collar, blue collar, technicians, labourers, seasonal employees and professionals. In particular, in hospitals and home care, we represent clerical employees, dietary employees, the regulated health professions and non-regulated health professionals. They may work in providing direct patient care, but also in providing cleaning services, dietary areas, housekeeping and secretarial. We also represent about 3,000 ambulance employees, who are made up of paramedics and dispatch. We also represent a large number of non-managerial municipal employees across the province, and they also work in the communities.

We looked at CUPE in Ontario and at our past experiences in terms of emergencies and declared emergencies. What we did, as a base, was look at what happened during the ice storm, SARS, the power outage of August 2003 and the most current Peterborough flood. When we compared SARS to the ice storm, the power outage and the flood, we realized it was different. In terms of the Peterborough flood, the power outage and the ice storm, there had been very little impact on the labour relations between employers, the unions and employees in the workplace. You compare that with the absolute labour relations chaos that occurred in our hospitals and public health units, and we had to ask ourselves why.

In part, the difference was that this current piece of legislation works—there are some good things in it—and that when you compare and contrast the two situations, you realize that the current Emergency Management Act does work. When applied properly, and when employers and unions and employees have to apply plans and put them in place, then the parties sit down, work it out and give notice to each other to know what's going to happen in the future. That is a result of this plan.

I think what we have to do, very much along the lines of OPSEU's presentation, is look at what happened with SARS, that type of emergency, and how we can work together to ensure that this doesn't happen again, that there are measures in place to ensure that SARS and the chaos that occurred in the many agencies and workplaces doesn't happen.

The most critical issue is health funding, hospital funding. Until there is adequate hospital funding, no

matter how much tinkering we do with this act, it won't change the outcome and the chaos that often arises. Many of the problems that arose from SARS related directly to the funding shortages faced by the health care system in Ontario. There have to be immediate improvements to infection control procedures and increased full-time staffing levels. We have to provide immediate funds for the training of health care employees in the province, including managers, supervisors and the regulated and non-regulated health care workers, to avoid future outbreaks of serious infections.

As OPSEU pointed out, the staffing shortages and problems within the workplaces were that you could have an outbreak of SARS at one site and employees often, due to the lack of full-time jobs, worked at many hospitals, would work at a hospital and work at a nursing home, and their employment was jeopardized.

A situation at a hospital caused a shortage at a nursing home as a result of someone who had worked at a hospital for a couple of shifts and was not able to go and carry out their regular duties at their nursing home job or at another hospital. This created great shortages. Until there is money put toward full-time staff—whether you're a housecleaner or a registered nurse or a registered practical nurse, full-time positions will help to avoid some of those problems that arose.

Certainly one of the greatest problems that arose, and OPSEU again referred to this, was the marked confusion and lack of communication during the outbreak between the employees, the hospital and government. Somehow something happened and employees were left confused and angry and unsure and absolutely scared in the workplace. They are knowledgeable and they know about infection control, but they weren't consulted. In fact, they were asked not to have input into their workplace protocols.

There was a lack of communication to the employees. But in addition, there was a very serious lack of communication with the union representatives of each of the unions in each workplace. They were bypassed and, as a result, the collective agreements were suspended and basically ceased to apply to the employees working throughout the SARS outbreak.

That's what's different with the other types of emergencies that have occurred in the province. As a result, there were individual employees very concerned, not getting the message, being very scared to work, very concerned about what type of mask to wear, who hadn't been properly trained on the masks. They were getting different information on what was the best type of mask.

Certain examples of that are that a registered practical nurse when going to a SARS patient's room was told during SARS 1 that she had to mask up. A dietary aide delivering a tray to that same room was told she did not have to wear a mask. Those are the types of things that happened. Then when certain new rules and procedures are put in place during an emergency, it is very difficult to train everybody, given the circumstances. It's very

important that training and protocol be put in place in advance.

We're also concerned about that issue of the suspension of the collective agreements during this period, that all of the terms and conditions of employment, the hours of work, the overtime, where people were working, what their rights were, were ignored and set aside, and that created additional chaos.

We want to make a number of recommendations. They follow OPSEU's and ONA's recommendations. Certainly one that they put before Justice Campbell in the SARS report—and it's our first recommendation—is that you have to look at necessary legal protections for the employees in these situations. If you keep that in mind in terms of how you're looking at this legislation, it should be able to guide you.

We certainly want the government itself to identify and trigger the emergency in that the definitions section is not all-encompassing of what type of emergencies there are. We would not want individual employers declaring a SARS emergency if that was not the case.

We want to recommend that employers and unions and employees be ordered or told or that it be recommended that they sit down to a negotiating table and bargain the protocols and bargain the procedures in advance of this, that they can address all of the issues that I've raised, that CUPE has raised in this, when they do it face to face at the table. We've recommended what should be the basis of those protocols and how the parties should collectively bargain it. It will avoid confusion; it will avoid chaos.

1130

We also, as OPSEU has, recommend that you look at all the other types of legislation in looking at this. I know, in terms of your questions, one of them was, what happens if someone's ordered to work out of their jurisdiction? For example, in terms of hospitals, sometimes you have a health care aide who has a limited scope of practice and may, in an emergency, be ordered to do something that is beyond her scope of practice. That could lead to all kinds of problems and liabilities and legal implications, and we want to raise that. These are serious issues. Collective agreements and the relationship between the parties are very long-established. Hospitals and unions and employee associations are very sophisticated, mature negotiators and bargainers and have a very long-term relationship. It should be left to them to bargain the scopes of practice within the workplace and what happens in an emergency, but you have to turn your minds to the Regulated Health Professions Act, which also guides this.

We also support whistle-blowing legislation to protect employees in the workplace during emergency acts and also all the time, and certainly increased health and occupational health and safety concerns. For example, when masks were not properly fitting during SARS 1 and SARS 2 and different hospitals had different masks, employees wanted to raise a concern why one hospital was getting a certain mask and another hospital was getting a totally different mask. They were very con-

cerned that there would be reprisals and retaliations for them bringing forward this issue. So whistle-blowing protection is very important when you're looking at legislation.

Finally, we welcome this opportunity to dialogue with you and we hope that it continues on this and on other matters.

Ms Marcelle Goldenberg: Good morning. My name is Marcelle Goldenberg. I'm here representing the Service Employees International Union Local, 1.0n. I think copies of the submission have been distributed.

We want to thank you, the members of the standing committee on justice policy, for providing us with this opportunity to comment on SEIU's position on various issues. Our comments are going to centre mainly on issues dealing with occupational health and safety legislation, regulations and the way that Ontario health care institutions and agencies deal with occupational health matters. We support both of the submissions that have been made to this committee by OPSEU and CUPE. You will see that in our presentation we echo most of the recommendations that have been presented by our two sister unions.

Just some brief background on our union: We represent 40,000 members across Ontario, approximately 90,000 members across Canada, and part of the 1.7 million members in the US and Canada.

We represent workers in hospitals, nursing homes, retirement homes, home care workers, community living settings and also a number of other workers in the private sector, such as building cleaning services, hotels and manufacturing.

Our membership includes registered practical nurses, environmental and housekeeping staff, clerical workers, dietary personnel, porters, personal support workers in various institutional and home care settings, technicians and the skilled trades. We also have representation of paramedical officers.

We perform critical work in preventing the spread of disease and infection in the health care delivery environment, which is often overlooked and undervalued.

Even though this committee is examining all legislation regarding emergency measures in Ontario, SEIU wants to make some specific observations and recommendations that arose from our experiences with the SARS epidemic last year.

The role that our members play on the front line of the health care system is most powerfully underscored by the fact that at least 10 SEIU members were diagnosed with and treated for SARS. The majority of those members were in our service category, either in housekeeping or nursing professions, but we also had a number of clerical workers working in the hospitals who were diagnosed and treated for SARS. Health care workers accounted for approximately 40% of SARS infections between SARS 1 and 2. Hundreds of others were at home in quarantine or unable to report to work.

SEIU members are proud of and committed to the work they do. Our members were front and centre during

efforts to address and contain the SARS outbreak. Like other professionals in hospital environments, they courageously accepted the very real and heightened risks associated with working during the SARS outbreak. At the same time, and understandably, many of our members were concerned and frightened by the risks and uncertainties of having to work in a SARS environment simply because a government might authorize it under an emergency measure directive.

Of particular concern is the very real fear that they will expose and infect members of their families, should they unknowingly be infected with an infectious disease such as SARS. For months, our members lived with these fears and with the stresses of working under quarantine, always putting the health and well-being of their patients first. They did their best to understand and support their institutions' efforts to combat SARS.

Unfortunately, as we now know, much of the risk and uncertainty was unnecessary and could have been avoided. This is particularly true of the failure of the workplace health and safety system to perform in many hospitals that were directly impacted by SARS. Health care institutions' health and safety committees have an essential role to play not only in protecting workers, but in providing a conduit for exchanging information to and from workers. That many joint health and safety committees were circumvented or neutralized by hospital administration during SARS is a reality. The concept that hospital administrators know best in protecting workers is neither true nor can it stand the test of due diligence.

In most Toronto hospitals, workplace health and safety systems and procedures were either ignored or marginalized. During SARS, the joint health and safety committees were overshadowed by hospital management. Many workers don't trust the system any more to protect their health and safety. In one hospital during SARS, a cleaner received a reprimand on his file because the supervisor felt the worker was being argumentative and unprofessional when he had been assigned to clean a SARS-related isolation room. The letter to the worker stated, "it is my expectation that when you are asked to do something, you will do it. If you have personal issues, you need to address them directly with your supervisor, not other people ... I recognize these are difficult times ... these are not normal circumstances ... I would like to remind you that the hospital has made every effort to ensure the safety and protection of all of our employees." Rather than reassuring the worker or trying to understand the health and safety concerns the worker may have had, the attitude of the hospital administration was, do just as you are told because we know best.

It is within this background and context that we will comment on possible emergency measures legislation that may impact our members.

Workers should not be afraid to refuse unsafe work. Too many workers during SARS were afraid to push the red button, afraid to stop the line, so to speak, until the defect is fixed. We note that the OHA, in a presentation to this committee, said that there's a need for an expeditious ability to address the potential for worker re-

fusals. It asked what essential work is and where health care providers can or cannot work.

Critical to all this, in our view, is the definition of the essential worker. SEIU is not willing to have hospital management determine who is an essential worker and who can be forced to work. We think in an emergency health crisis, such as an infectious disease epidemic like SARS, an outside authority—experts in all aspects of infection control and worker health and safety issues—should be the authority to determine who is an essential worker.

1140

For much of the 1990s, the province dismantled, downsized or delegated its responsibility for workplace health and safety to the workplace parties. In many workplaces, there was simply no way for workers to address their concerns where the framework for workplace health and safety was neglected or has essentially been abandoned.

In this paper we illustrate how the workplace health and safety system in health care has gone terribly off the rails. It simply was incapable of effectively rising to the challenges presented by SARS.

SEIU submits there is a great need to integrate efforts to deal with health and safety issues, along with those relating to disease and infection control. As this submission indicates, too often hospitals approached these problems as if they existed independently of each other.

SARS demonstrated the need for better coordination between the various regulatory bodies and the institutions responsible to them. Who had the authority during SARS? Was it the Ministry of Health, the hospitals, the city of Toronto's chief medical officer of health, the province of Ontario's provincial operations centre or the Commissioner of Public Security?

Until the Ontario government can guarantee the health and safety of workers, it cannot force them to perform emergency work of an unknown nature. SEIU believes the province should not legislate a statutory provision empowering the Lieutenant Governor to direct any person or member of a class of persons to render services of a type that the person may reasonably be qualified to perform in emergency situations. Rather, a recommendation is that it may be wiser for the province to develop emergency preparedness teams for various disaster situations that are staffed on a volunteer basis. Depending on the emergency, these teams could be assembled on a geographical basis or on a province-wide deployment basis.

The province must take a proactive approach to assembling these teams. Depending on the emergency, human, financial and capital resources need to be determined as to what each team requires. We can't stress enough that training for personnel should be provided much along the lines already now provided in the system we have in effect for the army reserves. This means that specific volunteer teams may require training for a week or two annually. Demanding services from qualified personnel at the height of a real crisis means we may have already been too late. One cannot train and deploy during

an emergency. The province must assemble specific response teams now to ensure training has been done before any deployment or human resources are necessary.

We believe it is a civic duty for people who have the skills during an emergency to offer them. If services are offered on a voluntary basis, the people providing them must have their jobs protected. Every volunteer in an emergency situation must be assured their jobs and all related benefits continue, including premium payments maintained. We take the position that there are no provisions of any collective agreement or the ESA that are to be waived. People working in emergency situations already shoulder a heavier burden. They should not be asked to waive any employment rights they currently have.

Other emergency laws may override other statutes, regulations and bylaws that the province of Ontario may want to legislate. SEIU cannot accept any suspensions of civil rights for persons who may be designated essential workers during an emergency.

Under an emergency infectious disease outbreak such as SARS, if a vaccine were available, would the government have the power to inoculate everyone? Currently, not all health care workers take an annual flu shot, not because it is not worthwhile, but because some people are allergic to the vaccine.

Yes, the state, or in this case the province, has a legal and moral authority to protect its citizens. There are already federal laws that allow the government almost unlimited power to deal with emergency situations.

We quote on page 5 both in terms of a highlight of the War Measures Act and the federal Emergencies Act dealing with the breakdown of emergencies. We note also that the federal Quarantine Act, which gives some powers to the government of Canada, has just been introduced for some changes.

In a public health context, we abhor the notion of conscription. We emphasize that for any emergency planning to work well, the context must always be that a person is willing—ie, volunteer—and qualified.

We're deeply troubled that public health provisions will override privacy rights of workers. One cannot trump the other. They must be given equal weight. During the SARS crisis in Ontario, we never got to the stage of developing volunteer teams. These discussions did surface during the stage of SARS 2, but only because hospitals were desperate to find willing volunteers to work on SARS units. It is little wonder these volunteers were difficult to employ, given the fact that too many institutions were found to be severely lacking in occupational health and safety standards.

SARS demonstrated that the cutbacks in the funding to public health had a devastating effect on the provision of services during an emergency and the capability of the system to cope. Health care emergencies are different from terrorist or environmental emergencies. SARS proved that we have to be proactive in our contingency plans for infectious disease emergencies.

Until health care workers are assured that they will receive the proper training and personal protective equipment for the infectious diseases they must encounter, they cannot be ordered by any authority to put their lives on the line.

Anyone volunteering for an emergency task force must be assured that there can be no liability against the person, such as a patient's family suing a health care institution or health care provider because the patient contracted the infectious disease from a caregiver because it was later deemed that the caregiver did not have all the personal protective equipment necessary that could have prevented the disease.

SEIU is a strong proponent of the whistle-blower protection for all workers who work in all health care institutions. Whistle-blower protection should not just be granted during an emergency crisis; it should also become an integral component of our health care team. Protecting lives is an everyday function for health care providers. If health care providers find institutional practices and policies that may endanger a patient or a client, they must be able to report it to the appropriate authorities without jeopardizing their jobs.

If new emergency legislation is enacted in Ontario, it is vital that the protection of the health and safety of workers be a major consideration in that legislation. Province-wide standards need to be developed for infection control so that all institutions practise the same infection control procedures.

Further to the emergency measures, the province of Ontario must strengthen the role of health and safety committees in our health care institutions. The role of the joint occupational health and safety committees in health care institutions and hospitals needs to be enhanced. Health care workers, particularly support staff such as housekeeping, dietary and clerical workers, must not be afraid to speak out for fear of losing their jobs. These workers must have full access to training and the right to know about any infectious diseases, substances or hazards that may affect their health and safety. Involuntary assignments to hazardous environments without proper training, education and complete protection must be prohibited.

Specific certification programs for health care workers' health and safety representatives need to be developed and must include training in the control of infectious disease. WHMIS training is still lacking in many health care institutions.

Subsection 9(12) of the Occupational Health and Safety Act prescribes that an "employer shall ensure that at least one member of the committee representing" an employer and workers be certified. In multiple union workplaces such as Ontario hospitals, each union should be entitled to have at least one member certified. This will enhance the training and, more importantly, the communication within the entire employee group the certified member is responsible for.

The Ministry of Labour inspection branch needs to adopt a more proactive, interventionist approach to en-

sure employers are complying with the Occupational Health and Safety Act and its regulations.

Infection control training and communication strategies need to include institutional support staff. Communication delays result in misinformation and fear. All health care workers have the right to know how their health and safety may be jeopardized and how they can take preventive measures to minimize exposure. Proper health and safety training and precautions should be a mandatory part of a health care institution's hiring practices and employee orientation programs.

Health care institutions need to have an adequate supply of personal protective equipment on hand. From now on, it is not adequate to say that only X personnel get to wear the gowns, the gloves and the N95 masks; however, Y personnel get only substandard protection.

1150

Hospital management teams must be educated and trained in occupational health and safety policies and procedures, with particular emphasis on health and safety policies as they relate to the health care sector.

Staffing of all hospital departments needs to be desperately reviewed. During an infectious disease outbreak, there's not enough staff available to handle the workload. Human resources policies must be developed to address health care staff recruitment and retention issues.

Part-time work in health care institutions must be reduced. Part-time workers must work at several health care sites to earn a living wage. During an infection/disease outbreak, they are restricted to work in only one site. This is the right policy to arrest disease transmission, but restricting part-time workers from working at multiple sites puts added stress on the staff who remain available at only one site.

Health care workers quarantined for infectious disease must be provided full wage and benefit loss replacements.

We've tried to raise a number of the issues that we received in the letter from the committee, and we're available to answer any questions. Thank you.

The Acting Chair: OK. We have questions or comments from the MPPs.

Ms Broten: Thank you for the detailed presentations you've provided to us today and, especially, thank you for the detailed written presentations that I can tell you we will take with us and further study after the hearing today.

I also want to, on behalf of the committee, ask you to thank all of your members for the work they do each and every day. This committee was cognizant from the beginning about the importance of speaking to front-line workers. We did that throughout the consultations to have an opportunity to talk to folks in what has somewhat been an unprecedented type of hearings, asking groups to come forward to us and talk about a piece of legislation that's not yet drafted and does not yet exist, to get that feedback from groups such as yourselves, and asking groups that had similar views or perhaps similar

perspectives to come so we could have a dialogue at the same time.

I wanted to respond to the concern that it was a quick process, and perhaps you did not have quite enough turnaround time within your organizations. I know we tried to reach out earlier in the summer. I want to let you know, you're not the only organizations that have suggested to us that it's a quick process. We have obviously been having these hearings throughout the summer, and there will be opportunity for more debate and more dialogue on this topic once we put forward legislation and a report.

I know we don't have a lot of time today, but I want to raise with you one of the issues. We heard from Alan Borovoy, and one of the provisions that Mr Borovoy suggested to us was with respect to authorizing or directing the workers. I know that many of you have commented on that.

One issue the committee needs clarification on is the circumstance where a worker in one of your organizations would want to volunteer and would be prohibited from doing so without a direction. We've talked about that topic throughout. So that's the first question.

The second one is, if I could just propose to you the provision that Alan Borovoy suggested to us and get your comments on it:

"Where a person is directed to render services: (a) require that the services be essential; (b) provide a defence to refuse the performance of any services beyond those normally required of such classes of persons, where there are reasonable grounds to anticipate serious perils to life, limb, or health; (c) provide reasonable compensation to persons who are so directed; (d) provide that such compensation be subject to independent arbitration; (e) in the absence of bad faith, indemnify those who cause injuries in the performance of such services."

Could I just get a comment from all or each?

Mr Tim Hadwen: I think our position is that the concept of some kind of overriding essential services scheme is fundamentally wrong. The provision of the services that need to be provided during an emergency can occur and will occur within the current framework, but to create some kind of essential services regime to get this kind of situation dealt with is unnecessary and intrusive and is pro-management in a way that's fundamentally unhelpful to actually properly dealing with the emergency. Within the current context, the legislative framework and collective agreement framework, emergencies have been, are and will be addressed in the way they need to be by the workers involved. The problems that exist don't relate to the legislative framework. They relate to all of the other issues that have been put before you in the speeches you've heard. So the whole idea of some additional essential services regime to address these issues is wrong.

Ms Broten: Were there situations during SARS—we've heard through other presentations that individuals wanted to volunteer, nurses from out of province,

paramedics etc, but they were prohibited from doing so. Can you comment on that? Was that an issue?

Mr Hadwen: I can't comment directly about a specific instance of a difficulty with somebody being able to volunteer. But in a general sense, if you go to the parties involved in a workplace and you have a sensible discussion with them about the availability of volunteers to help out, you're going to get the resolution that you need. These parties are quite capable of addressing the issue of persons who want to volunteer to do these kinds of things.

You just heard the submission that was made about the idea of having a proactive discussion about volunteering and being available to work in these kinds of emergencies. The idea of volunteering and being available to do so is something that these parties are entirely in favour of. How you go about implementing the volunteering is the point. And the point is that it can be done within the current framework in a way that will be entirely successful.

Ms Broten: So to sum up, I guess your position to us would be that if there were no volunteers coming forward, that should be alarm bells going off for all of us that there were serious issues in the workplace, and that's why dedicated people were not volunteering or coming forward; they were raising concerns.

Mr Hadwen: That's at least part of it. The other part of it is that all of these emergencies were, of course, dealt with by a whole level of volunteerism that occurred within the existing frameworks. All kinds of people stepped up and did things, made themselves available and worked extra time, all of those kinds of things, throughout without even getting into the issue of some extra-provincial volunteer. I'm just talking about a whole level of volunteerism that has occurred on every one of these occasions.

Ms Broten: Those are helpful comments.

The Acting Chair: Mr Zimmer?

And then I'll let you comment.

Mr Zimmer: No, thank you.

The Acting Chair: Marcelle, would you like to comment on that?

Ms Goldenberg: I'd just wanted to add to what Mr Hadwen was saying in terms of volunteers. One of the issues that arose in SARS 2, where we actually knew it was arising at some of the hospitals, was that the parties actually agreed that, to create a sort of fairness within a type of volunteer, new jobs were posted, and people applied for them. The parties agreed that the position wouldn't be posted for seven days, but would be posted for 24 hours, and then all of the volunteers and those people who were interested were able to apply. Then a properly qualified person was put in the position. So it was the parties, after SARS 1, turning their mind to a protocol that would work, that would allow volunteers to work in the workplace, and that also allowed the provisions of a collective agreement to remain in place.

The Acting Chair: You said those were 24 hours, time specific?

Ms Pancer: Yes. That's an example of how we made something work between the union and the employer in the workplace. We suspended a particular time period in the collective agreement for SARS 2, to get people who were volunteering to work directly with SARS patients and were agreeing to do that work. Everyone was being given an opportunity to apply for that work. There were many interested people, and they were able to apply sort of the normal provisions of the collective agreement—

The Acting Chair: Sorry. Before I go to Mr Kormos, is it possible that the committee could get a copy of that posting or something as an example, just for our own—

Ms Pancer: I can try, but I'm not sure if I can.

The Acting Chair: If it is available, I just thought it might be interesting to look at.

Mr Hadwen: But if the point that you take from that example is you need to make sure that management is given the power to direct and require, as a unilateral action, that there be 24-hour postings, you're missing the point of the example. The point of the example is that, within the current framework, this arrangement was sensibly arrived at by the parties in that workplace. That's the point of the example.

The Acting Chair: Anyway, sorry to ask.

Mr Kormos?

Mr Kormos: This may simply be a conflict in recollections. As I recall, discussions around volunteers by various participants were of two classes. One was the reluctance of some professionals—firefighters were an illustration—to have pressed upon them volunteers who had no training whatsoever, who, however enthusiastic they were, had nothing by way of background that would permit them to be an effective member of a firefighting team. I suppose the analogy could be made with health care, other health professionals and any emergency response team. That was number one.

Number two: I recall some comment about a reluctance to assume that certain regulated professionals from other provinces had the same qualifications as regulated professionals in Ontario, and hence a reluctance to automatically bring them into the teams when there was uncertainty about whether they were going to be performing at the same level with the same fundamental premises. That's just my recollection.

There was never, insofar as I recall, an indication by anybody that said that volunteers in any way were not acceptable to professionals, health professionals and others working in Ontario.

I also want to comment around this business of directing work, and put to you a question, in contrast to authorizing work. You're right; Mr Borovoy earlier today spoke specifically about the provision for directing work, and he made some recommendations around it. That is the conscription concept, or the press gang concept.

This committee has before it material that goes beyond merely directing work. It has a phrase that it's going to be contemplating that would permit the government to not only direct a person to perform certain work—the

conscription, and you folks have responded to that, as did Borovoy earlier—but also the—

The Acting Chair: Excuse me for a moment. If we could just recess quickly to go and vote, and then we'll return right back in about seven minutes. If you could just bear with us.

The committee recessed from 1202 to 1211.

The Acting Chair: We've got about 15 minutes, because everybody, I'm sure, on the other side has the same type of commitment problem. Peter, do you want to resume?

Mr Kormos: Yes. The issue is one of conscription directly and authorization. On conscription, Borovoy talked about there being defences; in other words, not forcing people to take on a task or a role that was dangerous, that they felt incapable of doing. Reference was made to Second World War Canadian conscription, but as I recall the history, even in Canadian conscription there was the phenomenon of zombies, in that people who were conscripted, rather than volunteering, weren't necessarily compelled to put themselves in the line of fire.

The more interesting one is the authorization of any person or any person of a class of persons to render services of a type that that person or a person of that class of persons is reasonably qualified to provide. My interpretation of that would mean that the government—the Lieutenant Governor in Council—could make a silk purse out of a sow's ear, that it could authorize people, for instance, unlicensed to perform a particular role, to perform that role. It could turn bus drivers into ambulance drivers, authorize a person or a class of persons to do a particular line of work. There was concern expressed during submissions by some participants that that was necessary, that we wanted to have flexibility in terms of the roles people were performing. Front-line emergency response roles: There has already been some experience within your fields in terms of licences to drive ambulances. What do you say to a government's arbitrary stand-alone power to override the regulation and licensing of professionals? If you don't share that interpretation, and I appreciate I'm posing this to you without a text, what do you say to that, in a most general way?

Ms Casselman: If I could, before I hand it over to Tim to see if he can wrap his head around this, there are no ambulance drivers.

Mr Kormos: I'm being colloquial.

Ms Casselman: I know. I want to make sure the committee understands that our ambulance paramedics are highly trained.

Mr Kormos: That's right.

Ms Casselman: So you can't just stick someone in there.

Mr Kormos: Precisely the point.

Ms Casselman: Exactly. One side comment on that is that you've already lost one of the abilities to have even an ambulance paramedic move from one employer to another and perform the duties they are trained to do, because of the procurement and outfitting of ambulances

which has been lost as a result of the Judson Street sell-off. One of our members who worked at Judson Street, where they actually bought all the ambulances for all the municipalities across the province and ensured they were outfitted the same—our procurement officer was also in charge of getting those masks for every hospital outside of Toronto. That has been lost to you as well because Smitherman thought the Tory idea of laying off a bunch of those folks was a good idea. So that's another emergency measure you may want to look at: How would you get those kinds of equipment required, because you now have lost that ability?

Mr Hadwen: I don't think there's anything to add. The fundamental point is that there are a whole bunch of reasons why people are able to do certain things and are not able to do other things. It's because they have the training, the background, the experience, the regulation, the warrant, the authority to properly do those things and to safely do those things. That's how you get those things done sustainably and well, even in an emergency. As a basic approach to this, to focus on authorizing people to do those things for which they are not properly licensed, equipped or trained is not a fundamentally helpful approach to the problem.

Mr Kormos: Thank you. Mr Borovoy also—and to his credit, but certainly not unexpectedly—cautioned that it should be clear in any legislation that the extraordinary powers that a government acquires in an emergency should not be capable of being used to terminate a labour dispute by imposing a contract or conditions on those particular workers. Can you tell us what the experience has been with respect to the kind of workers that you folks work with and represent who may have been locked out or on strike in the context of responding to, let's call it, even a mini-emergency within the context of their work?

Mr Hadwen: During the course of certain kinds of strike situations in public service environments, you have the ongoing provision of the services that the public needs occurring. Then an emergency will occur and, lo and behold, everybody will rush in and deal with the emergency. Then, if there's a dispute about anything, it will be about who pays for the coffee and doughnuts, but there won't be any disputes about actually getting the emergency looked after. So that has been the practical experience in these issues.

Mr Kormos: I suppose I'll end with this. The phrase came up, particularly during CUPE's submission, very pointedly about the need—this was implicit in what they said—to bargain and sit down—you, speaking on behalf of your membership, your workers, your health professionals, among others—with the government to develop emergency response, emergency planning, emergency training structures.

I appreciate Ms Broten's comments that no legislation has been written, but legislation had been written, not by this committee but by the Ministry of the Attorney General, which was a wish list of powers by the government. Nobody really knows why, or nobody's prepared to—it's like the little boy who wet the bed. He isn't quite sure

how it got there. Nobody's quite prepared to admit why and how and for what reason this bill came into existence, but it's there.

Tell me about your bargaining experiences, the recent ones, and the inclusion of emergency management preparation, training and preparedness.

Ms Pancer: I can speak to that on behalf of CUPE because, as a result of SARS at a number of hospitals, we are currently attempting to do that. We are currently sitting at bargaining tables, trying to reach an agreement on protocols and training, and it's very difficult when employers are not given any guidelines to follow.

It's made much worse because we are in the process of trying to do that. We're trying to put in training. We're trying to put in how staff shortages are going to be dealt with. We're trying to deal with how extra things like bonuses are going to be dealt with, because we certainly had the situations where those who worked in particular areas of a hospital and by their work were given spa treatments, were given getaway weekends, were given significantly different rates of pay, and that was different from what our other members were getting working with SARS patients at other sites of the same hospital. I'm talking, actually, about the same hospital. So you actually had members of a bargaining unit—people who do the same work, who worked at different sites for the same employer—with one getting triple pay and the other getting their regular rate of pay.

1220

We're trying to deal with that now. We're also trying to bargain about how we're going to deal with it in the future. We're bargaining that. We are determining, if you are going to have people working in infection controls, what hours of work they may work. They'll keep, possibly, their rates of pay the same. They may have to have additional breaks. They may have to have different hours of work. We are looking, if the hospital receives gifts from the community as a result of trying to show some gratitude to the health care workers, which often happens, at how that might be distributed.

We're trying to do that now as part of our bargaining process, so that everyone will be aware of it. Trying to do that in a vacuum without any guidance from the province is very difficult—in addition, without the funding, because we're trying to deal with the protective measures and trying to put in everyone's concerns about protective wear. We're trying to do that up front.

We are also, though, putting in it how we're going to deal with occupational health and safety concerns, that the act will apply and everyone will have the right to raise concerns during an emergency and feel no fear of retaliation.

So we are trying to capture that now in documents, in an agreed-to protocol that will be signed off, hopefully, by the union and the employer to deal with an emergency. We think that is the right way to go. We'll be able to have that document. We'll be able to post that document in a workplace. The members will know what their rights are. The employer will know what their rights are. If they have staff shortages, if there's a unit that's short

or something, everyone will know how it's going to work. It is also guaranteeing that the collective agreement will remain in place and will apply to everybody.

The Acting Chair: And that's in process right now, you're saying.

Ms Pancer: It is.

The Acting Chair: OK. Thank you.

Ms Goldenberg: If I could just add to CUPE's comments, most of the unions right now are in bargaining for their hospitals, as they're all open, so SEIU and CUPE are in provincial bargaining.

We also wanted to put in comprehensive proposals to deal with the same issues that CUPE raised, so that there would be a framework. Unfortunately, the OHA took the position that health and safety issues and occupational health and safety language could not be negotiated at the provincial level. They insisted that it be negotiated hospital by hospital. We think that this is one of those issues that absolutely needs, if we're able to develop a protocol, to have a proactive approach to it, to have it province-wide. There should be no differentiation in terms of how we react to an emergency, whether you're up in Thunder Bay or whether you're in Cobourg. So just to underline, in terms of our need and that we felt there was some urgency in terms of developing this protocol and having it applicable to all of our members across the province, that we're not going to be able to meet that time frame because, as we relegate this issue down to a local-by-local level, it will probably take us a much longer period of time.

The Acting Chair: That's very helpful. Anyway, I think we've run out of time.

Mr Kormos: Mr Hadwen wants to make a brief comment.

The Acting Chair: Did you want to make a comment?

Mr Hadwen: I was just going to say that, to the same effect, in our August 25 letter to Mr Justice Campbell of the SARS commission, on page 6 we specifically recommend that the Public Hospitals Act be amended to provide that each hospital negotiate a health emergency plan. That's an example of the kind of idea that's being put forward. If you want to impose requirements in this area, require people to get together and plan ahead.

The Acting Chair: Thank you for being here. Just to let you know, this is quite an unusual process in that we're having presentations made before the bill is introduced. Once the bill is introduced, then there will be first and second reading and more public hearings. So this is the beginning of a long process here. Thank you very much for your very informative input here today.

Ms Casselman: Will there be public hearings across the province?

The Acting Chair: That's determined by the House leaders.

Mr Kormos: It's determined by the government.

The Acting Chair: You're pretty jaundiced in terms of your outlook on—anyway, meeting adjourned.

The committee adjourned at 1226.

CONTENTS

Thursday 14 October 2004

Emergency Management Statutes Review	JP-343
Crisis Management Specialists Inc.	JP-343
Mr Brian Hay	
Canadian Civil Liberties Association	JP-347
Mr Alan Borovoy	
Ontario Public Service Employees Union; Canadian Union of Public Employees, Ontario division; Service Employees International Union, Local 1.0n	JP-355
Ms Leah Casselman	
Ms Risa Pancer	
Ms Marcelle Goldenberg	
Mr Tim Hadwen	
Committee business	JP-354

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**Standing committee on
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 20 October 2004

Mercredi 20 octobre 2004

The committee met at 0913 in room 228.

EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair (Mr Mike Colle): I'll call the committee on justice policy to order. Members of the committee, we have an item from October 14: witness comments to be considered for inclusion in the report. One of the directions we have from the Legislature is to look at coming up with draft legislation and a report. So far, I have seen no indication of any report. The time is very close to the deadline of November 1. What's the committee's wish?

Ms Laurel C. Broten (Etobicoke-Lakeshore): I'm not sure how much of this discussion we want to have in

camera. When we actually start writing and working on the report and legislation, I would move that we do move, as we have been, in camera.

Speaking to the issues in terms of a report, it is my understanding that there is a desire on the part of the committee to see a brief report be completed, and that we want to start with the document that has been prepared by legislative research and move into that quite extensively over the next day, today and tomorrow.

But before we get into those details, I would move that the report-writing stage and the drafting of the legislation both today and tomorrow be done in camera.

The Acting Chair: Any comments? We're moving into closed session.

The committee continued in closed session at 0915.

CONTENTS

Wednesday 20 October 2004

Emergency Management Statutes Review..... JP-367

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr David Oraziatti (Sault Ste Marie L)

Vice-Chair / Vice-Président

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Michael A. Brown (Algoma-Manitoulin L)

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Mr John Wilkinson (Perth-Middlesex L)

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JP-16

JP-16

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Official Report of Debates (Hansard)

Wednesday 27 October 2004

Journal des débats (Hansard)

Mercredi 27 octobre 2004

**Standing committee on
justice policy**

**Comité permanent
de la justice**

**Emergency Management
Statutes Review**

**Examen des lois ontariennes
sur les mesures d'urgence**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Wednesday 27 October 2004

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT
DE LA JUSTICE

Mercredi 27 octobre 2004

*The committee met at 0901 in room 228.*EMERGENCY MANAGEMENT STATUTES
REVIEW

The Acting Chair (Mr Mike Colle): I call the standing committee on justice policy to order for Wednesday, October 27. On the agenda today we have report writing. How do you wish to proceed?

Ms Laurel C. Broten (Etobicoke-Lakeshore): I'd like to move this session into closed session for the continuation of report writing for today and tomorrow.

The Chair: All in favour? Carried. We'll now move into report-writing stage.

The committee continued in closed session from 0902 to 1045.

The committee recessed from 1045 to 1055.

The Acting Chair: I'll bring the standing committee on justice policy to order. In this session, is there a motion to adopt the draft report?

Ms Broten: Yes. I'd like to move to adopt the draft report with the editorial changes we made this morning.

The Acting Chair: All in favour of the motion to adopt the draft report and the editorial changes made in the report-writing stage? We have a motion before us. Any objections? All in favour? Carried unanimously.

Secondly, shall the Acting Chair present the report to the House?

Ms Broten: I'd like to make a motion to translate and print the report as adopted by the committee.

The Acting Chair: OK. We have a motion to translate and print the report as adopted by the committee and to proceed, as Acting Chair, to present that report translated and printed to the House. All in favour of that? Carried unanimously.

The second part, dealing with the draft bill: Is there a motion to adopt the draft bill?

Ms Broten: I'd like to move to adopt the draft bill in the form reviewed this morning with the minor editing that was made during closed session.

The Acting Chair: Any questions or comments? There being none, all in favour of adopting the draft bill? Carried unanimously.

Secondly, I need a motion to translate and print the draft bill and introduce the bill to the House.

Ms Broten: I so move.

The Acting Chair: We've got a motion for the Acting Chair to introduce the bill to the House. Any discussion, comments? All in favour? Carried unanimously.

Any other items of business? There being none—

Ms Broten: I thought we should just thank everyone, the staff who helped us in what was a long but, I think, very invigorating process, as we worked together in an unusual circumstance to draft legislation. So thank you to the entirety of the committee and everyone who assisted us: to legal counsel, and thank you, Chair, for bringing us through this process, and to the research lawyers for helping us along, as well as the clerk.

The Acting Chair: As Acting Chair, I would like to thank all staff, from research, Avrum Fenson and Margaret Drent, for work above and beyond the call, and certainly the clerk, Katch Koch. We also had full co-operation from Hansard and everyone involved, and the members of the committee.

It was four long months, but I think well worth the effort and well worth the hard work you put into it. As Acting Chair, I want to thank you for your efforts and for your co-operation in getting this work done in terms of the report and a bill.

Mr David Zimmer (Willowdale): If I might add, a special thanks to the whip on the government side of the committee for steering us through this with efficiency and, I know, a tremendous amount of hard work.

The Acting Chair: Yes, and certainly to thank all the ministries and all the individuals, organizations, the participants from across Canada, California etc, who, by teleconference, gave us information. That input was most valued, and I think it'll be demonstrated in the report and in the bill.

Do I have a motion to adjourn?

Ms Broten: Yes.

The Acting Chair: Motion to adjourn. The committee now stands adjourned.

The committee adjourned at 1100.

CONTENTS

Wednesday 27 October 2004

Emergency management statutes review.....	JP-369
---	--------

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr David Oraziatti (Sault Ste Marie L)

Vice-Chair / Vice-Président

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JP-17

JP-17

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Wednesday 24 November 2004

Journal des débats (Hansard)

Mercredi 24 novembre 2004

Standing committee on justice policy

Ministry of Consumer and
Business Services Statute Law
Amendment Act, 2004

Comité permanent de la justice

Loi de 2004 modifiant des lois
en ce qui concerne le ministère
des Services aux consommateurs
et aux entreprises

Chair: David Oraziotti
Clerk: Katch Koch

Président : David Oraziotti
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Wednesday 24 November 2004

COMITÉ PERMANENT
DE LA JUSTICE

Mercredi 24 novembre 2004

The committee met at 1001 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Bob Delaney): Good morning, ladies and gentlemen. I call to order the standing committee on justice policy. The agenda that we have before us today is Bill 70, An Act to amend various Acts administered by or affecting the Ministry of Consumer and Business Services.

We have a report from the subcommittee. Is there a mover of the report from the subcommittee?

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Yes, Mr Chairman. Since you were on the subcommittee and are currently in the chair, I've been asked to move it. I'm pleased to do that:

Your subcommittee on committee business met on Friday, November 19, 2004, and recommends the following with respect to Bill 70, An Act to amend various Acts administered by or affecting the Ministry of Consumer and Business Services:

(1) That the committee meet on Wednesday, November 24, 2004—this day—in Toronto to consider Bill 70.

(2) That the clerk of the committee be authorized to post an advertisement on the Ontario parliamentary channel and on the Internet.

(3) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Vice-Chair: Are there any comments on the report of the subcommittee? Seeing none, Mr McMeekin has moved adoption of the report of the subcommittee. All in favour? Opposed? Carried.

Mr Peter Kormos (Niagara Centre): Chair, if I may ask the clerk to advise us of the nature and extent of the advertising as instructed by the subcommittee and the response, if any, to the advertising of this committee hearing.

The Clerk of the Committee (Mr Katch Koch): An ad was posted on the parliamentary channel and on the Legislative Assembly Web site Friday afternoon of last week, following the subcommittee meeting. The ad ran until last night. We did not receive any requests from people interested in—

Mr Kormos: Had there been any requests or inquiries during the course of this bill through the Legislature during second reading?

The Clerk of the Committee: I don't know.

Mr Kormos: Not that you're aware of?

The Clerk of the Committee: Not that I'm aware of.

Mr Kormos: I presume those would have been collected had they come in.

The Clerk of the Committee: Yes.

MINISTRY OF CONSUMER AND
BUSINESS SERVICES STATUTE LAW
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT DES LOIS
EN CE QUI CONCERNE LE MINISTÈRE
DES SERVICES AUX CONSOMMATEURS
ET AUX ENTREPRISES

Consideration of Bill 70, An Act to amend various Acts administered by or affecting the Ministry of Consumer and Business Services / Projet de loi 70, Loi modifiant diverses lois appliquées par ou touchant le ministère des Services aux consommateurs et aux entreprises.

The Vice-Chair: We're here to consider Bill 70. Are there any comments, questions or amendments to any sections of the bill, and if so, to what section?

Hearing none, is it the will of the members that more than one section be considered at the same time?

Mr Kormos: Yes.

Mr Kevin Daniel Flynn (Oakville): Yes.

The Vice-Chair: Shall sections 1 through 25 carry?

Mr Kormos: Carried.

Mr McMeekin: Those sections were my very favourite, Mr Chairman, so we want to carry those.

The Vice-Chair: Carried.

Shall the title of the bill carry? Carried.

Shall Bill 70 carry? Carried.

Shall I report the bill to the House?

Mr McMeekin: Absolutely. Carried.

The Vice-Chair: Agreed?

Mr McMeekin: That too, yes.

The Vice-Chair: Is there any other business for the committee to consider this morning?

Do I hear a motion to adjourn?

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): So moved, Mr Chairman.

The Vice-Chair: A motion to adjourn from Mr Brownell.

The committee adjourned at 1006.

CONTENTS

Wednesday 24 November 2004

Subcommittee report	JP-371
Ministry of Consumer and Business Services Statute Law Amendment Act, 2004, Bill 70, <i>Mr Watson</i> / Loi de 2004 modifiant des lois en ce qui concerne le ministère des Services aux consommateurs et aux entreprises, projet de loi 70, <i>M. Watson</i>	JP-371

STANDING COMMITTEE ON JUSTICE POLICY

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JP-18

JP-18

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Thursday 25 November 2004

Journal des débats (Hansard)

Jeudi 25 novembre 2004

**Standing committee on
justice policy**

Ontario Heritage
Amendment Act, 2004

**Comité permanent
de la justice**

Loi de 2004 modifiant la Loi
sur le patrimoine de l'Ontario



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STANDING COMMITTEE ON
JUSTICE POLICY

Thursday 25 November 2004

COMITÉ PERMANENT
DE LA JUSTICE

Jeudi 25 novembre 2004

The committee met at 1001 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Bob Delaney): Ladies and gentlemen, let's bring the meeting to order. This is the standing committee on justice policy. Everyone should have an agenda. Our first item of business is the report of the subcommittee. Do I have a report of the subcommittee?

Ms Jennifer F. Mossop (Stoney Creek): Your subcommittee on committee business met on Friday, November 19, 2004, and recommends the following with respect to Bill 60, An Act to amend the Ontario Heritage Act:

(1) That the committee meet on Thursday, November 25, 2004, and Wednesday, December 1, 2004, in Toronto to hold public hearings on Bill 60;

(2) That the clerk of the committee be authorized to post an advertisement on the Ontario parliamentary channel and on the Internet;

(3) That the deadline for written submissions be Wednesday, December 1, 2004, at 12 noon;

(4) That the clerk, in consultation with the Chair, be authorized to schedule witnesses on a first-come, first-served basis;

(5) That the research officer provide the following: chronology of Ontario heritage legislation, by November 24, 2004; summary of presentations, before clause-by-clause consideration of the bill.

(6) That the deadline for amendments be 6 pm on the day before clause-by-clause consideration of the bill;

(7) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Vice-Chair: Are there any questions and comments on the report of the subcommittee? Going once, going twice—hearing none, do we have a motion to adopt the report of the subcommittee? All in favour? Carried.

ONTARIO HERITAGE
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT LA LOI
SUR LE PATRIMOINE DE L'ONTARIO

Consideration of Bill 60, An Act to amend the Ontario Heritage Act / Projet de loi 60, Loi modifiant la Loi sur le patrimoine de l'Ontario.

The Vice-Chair: Our first presenter today is the Escarpment Biosphere Conservancy, Bob Barnett, executive director. Are they here?

Mr Rosario Marchese (Trinity-Spadina): Mr Chair, it's not 10:15 yet. It's likely they could be coming, so you might as well move on to the next one.

DIANE CLENDENAN

The Vice-Chair: It is likely they could be coming. We know that we have one deputant who is here, and perhaps we could simply exchange positions with deputant Diane Clendenan, if she's willing to begin at this point. Diane, are you willing to do that? OK. Please come up.

Diane, welcome to the standing committee on justice policy. Despite the formality of the proceedings, the rest of it should be relatively informal. I'll ask you, first of all, to state your name for the purposes of Hansard.

Ms Diane Clendenan: My name is Diane Clendenan.

The Vice-Chair: You have 15 minutes to talk with the committee. You can use the 15 minutes any way you wish. You can speak for all of it. If you choose to leave some of it unused, then questions will rotate for the balance of the time evenly among the parties represented here. You can proceed any time you wish.

Ms Clendenan: As I said, my name is Diane Clendenan. I was born here in the city of Toronto and have roots that stretch back for five generations in this province. I'm a retired public school teacher, formerly with the Toronto Board of Education. My degree in sociology is from York University. I am a family historian.

In 2002, I also testified as an expert witness at the commercial appeal tribunal in the case of St Alban's Anglican Church Cemetery, Palgrave, Ontario: Ontario Government v the Ontario Historical Society. In this case, the government of Ontario had ordered, and then

argued at a public hearing, that it was in the public interest to relocate the cemetery for real estate development. I gave testimony that it was not in the public interest to dig up and move the cemetery.

I worked with the families and descendants, both in this case and the application to put a condominium development on the burying ground at St James Cathedral. I know personally how deeply distressed and appalled these families were, hence my interest in appearing at this public hearing.

First of all, I am pleased that there are to be changes made to the existing Ontario Heritage Act, which was passed nearly 30 years ago, but at the same time I am dismayed to find that there's no mention of, nor protection for, cemeteries. May I quote from an article that is entitled *Backgrounder* and dated April 21, 2004, that came from the Ministry of Culture:

"In Ontario communities, heritage is reflected in landmark buildings, small-town main streets, historic neighbourhoods, scenic landscapes, archaeological sites, special cultural places, including aboriginal sites, and such unique structures as lighthouses, mills and barns. These heritage resources are irreplaceable."

Are our cemeteries not heritage sites? Are our cemeteries not irreplaceable?

I have been researching my family heritage since 1978 and am currently a member of many genealogy and family history societies in this province, Manitoba, England and Scotland. Through the many years, I have spent countless hours walking through many cemeteries in order to find some trace of my ancestors and, might I add, in all kinds of weather. They have ranged from those found here in the city of Toronto to those found in the more rural settings of Bruce county and Haldimand and Norfolk counties. It is, however, the smaller ones which are of special interest to me, the well over 3,000 inactive cemeteries which are threatened by development pressures and are not protected.

During the last four years, since my retirement, I have been privileged to be part of a team of people who have been spending Wednesday mornings transcribing St John's Norway Cemetery here in the city. There's also another team actively transcribing St James Cemetery. We spend many hours on our hands and knees, prodding to find cemetery markers, angling our bodies in such a way to help the sun make a stone more legible and often just wondering about the lives of the people who are buried there. I was also involved with the transcription of St Michael's Cemetery in Toronto.

1010

What can a cemetery tell us? One looks at the general layout. Family groupings are often found in plots that are close by. This might make it easier to show which Smith families, for instance, are related and which Smith families are not. The moving of a stone destroys this piece of Ontario's history. People who visit also want to know the exact place where their ancestors lie buried.

An inscription on a stone can reveal not only birth and death dates but the place where the event happened. It

might reveal the cause of the death, such as a drowning. It might reveal a regimental number which would help lead people to find military information. It might reveal whether the person is a mother or a father, a sister or a brother, a son or a daughter. The carving of the stone itself might reveal a hobby such as golfing or sailing, or it might display an insignia that reveals a membership in an organization such as the Masons. All of the above helps our fellow citizens learn more about their ancestors. It is essential that these cemeteries be kept in their original locations.

There is the importance of the heritage issue itself. I am sure that all members of this Legislature realize that cemeteries are a vital and irreplaceable component of Ontario's heritage. Unfortunately, Bill 60 does not reflect this. If it did, Bill 60 would have clear, undeniable protection for our cemeteries. Having appeared at a tribunal in 2002 as an expert witness against the province of Ontario, I know first-hand the importance of clear legal wording, especially when I am being cross-examined by lawyers from the Attorney General's office. You have a duty to ensure that this Heritage Act clearly protects our vulnerable cemeteries in their original locations, especially all our registered and inactive cemeteries.

In the past, we have found it important to stress the importance of heritage and, indeed, have assigned the month of February to be used for that purpose. As a former teacher, I know that that time is used to stress heritage in the schools. During Heritage Month at the school where I taught, we often had visitors to help us learn more about different cultural backgrounds. We would help children learn more about their own families and help them to chart their own particular family trees.

Cemeteries also help children to learn more about the history of Canada. When the weather is better, many teachers take their classes on field trips to cemeteries to learn not only about prominent people of the past but to learn more about the ordinary, or perhaps I should say extraordinary, pioneers who first came here, and to learn about the diverse cultures of Ontario.

This Heritage Act, by not clearly protecting our cemeteries, sends a terrible message to our children, our teachers and local governments that our cemeteries are not important. It also sends a very alarming message to developers who want to build on our cemeteries.

I work with families whose ancestors are buried in cemeteries all across Ontario. With this amendment to Bill 60, what message are you sending to those families? You have an historic opportunity to send a message of respect for all the peoples of Ontario.

Lastly, there is the dignity of the deceased. Having recently gone through the death of a parent, I simply cannot fathom why one might entertain the thought of relocating a cemetery. My mother believed that forever meant forever. Do you? What kind of society do we live in that could cheat our ancestors of their final resting places?

Thank you for your time.

The Vice-Chair: Thank you very much. We've got about six minutes remaining. That will give roughly two minutes, or perhaps a question to each of the parties. We'll begin with Ms Munro.

Mrs Julia Munro (York North): Thank you very much for coming here today to bring a personal face to this issue. As I listened to you, I couldn't help but remember in my own personal family background the kinds of challenges that you have identified for us. Certainly, I recall being out in one of the many, many little southwestern Ontario pioneer cemeteries with my mother, busy doing exactly what you're saying: trying to hook up family members by the location and so forth.

I certainly agree with you that it is an area that deserves our attention as legislators and one where we need to look at the best vehicle for protection. I think, by bringing this forward today, you are giving us that opportunity and, frankly, a big push in the direction of what is the best vehicle for the protection.

I want to thank you for doing that and recognize the importance of what you're doing as a volunteer, in terms of bringing greater awareness to the tremendous data that can be gleaned from even a casual walk through an old cemetery. Thank you so much for bringing that to our attention today.

Mr Marchese: Thank you, Diane. I just want to say to you that the New Democrats support Bill 60, but we also support greater protection for cemeteries. That's why it is our intention to bring forth amendments when we deal with this bill on a clause-by-clause basis.

In the meantime I want to ask you, have you had discussions with the ministry staff and/or the minister and/or her staff in terms of this issue, and what have they said by way of support or objections to what you're trying to achieve?

Ms Clendenan: To date, I have had no discussions with anybody at that particular office.

Mr Marchese: But have you made any efforts, or have others that you are aware of, made any efforts to reach them to talk about how you might, in this bill, make changes that would protect cemeteries in one way or another?

Ms Clendenan: I have written. I did make a written report to the Premier and I sent a copy to you as well, and to the Minister of Culture, but I have not had a response from them to date.

Mr Marchese: Diane, in your view, what are the objections to our interest in protecting cemeteries from being relocated or displaced?

Ms Clendenan: Could you please repeat the first part of your question?

Mr Marchese: Cemeteries are not included in this bill, in terms of how we protect them. What might you think are the objections to it?

Ms Clendenan: At this point I can't think of any reason why somebody would object to doing it. They are definitely historic in nature. They are very often crumbling due to weather, and we have to do something.

Mr Marchese: I understand that. Let me ask you another question: Do you think all cemeteries should be protected or do you think that some could be relocated?

Ms Clendenan: I think all cemeteries should be protected.

Ms Mossop: Thank you very much for your passionate presentation. I am so impressed with the history of your work.

I have a couple of questions for you. First of all, you mentioned that you had sent a letter to the minister's office. Can you tell me when you did that?

Ms Clendenan: I would say it would be approximately three weeks ago.

Ms Mossop: And you have yet to receive a response?

Ms Clendenan: That is correct.

Ms Mossop: I had similar questions with regard to this. I'm the parliamentary assistant to the minister. It's my job to get to know this bill fairly well, and I had posed this question as well. My understanding is that cemeteries are presently covered under the Heritage Act. They aren't specifically named, such as a bridge is not specifically named, as things that are protected, but they are presently protected under the Heritage Act. As such, these amendments that are being proposed are supposed to, and should, provide more strength to protect cemeteries as well as others. My understanding is that there are several cemeteries in the province of Ontario already designated under the Heritage Act. These amendments should provide more protection for cemeteries at present. Are there other measures that you feel we might be taking?

Ms Clendenan: I still feel the word "cemetery" should actually appear, rather than, say, for instance, a word such as "property." I think cemeteries are special and unique. It is the final resting place of our citizens. I really feel quite strongly about that issue, that the word "cemetery" should appear.

Ms Mossop: Thank you very much for your time.

The Vice-Chair: Thank you very much.

1020

ESCARPMENT BIOSPHERE CONSERVANCY

The Vice-Chair: Our next deputation is the Escarpment Biosphere Conservancy.

Mr Bob Barnett: Thank you very much, Mr Chairman and members of the committee. It's a pleasure to be here.

The Vice-Chair: Good morning.

Mr Barnett: I do have copies.

The Vice-Chair: Please give the copies of your material to the clerk to distribute.

You'll have 15 minutes for your presentation. You can choose to speak for all of it or part of it. Any part that you leave remaining will be divided equally among the three parties and they can ask you some questions. So would you please begin by stating your name clearly for Hansard, and carry on.

Mr Barnett: I'll try to be fairly quick here and take less than the amount of time. I'm Bob Barnett. I'm executive director of something called the Escarpment Biosphere Conservancy. We create nature reserves on the Niagara Escarpment. I'm also the co-chair of the government relations committee of the Ontario Land Trust Alliance, which is the confederation of the 36 land trusts across the province. We've got quite a few volunteers involved, all in all.

The reason I'm here today is that we feel land trusts should have extra reasons for being able to protect land through the tool of conservation agreements or what are sometimes called conservation easements. Right now, only the Ontario Heritage Foundation and municipalities can perform some of this protection. We've got some, I think, pretty good volunteer charitable organizations out there in many communities across Ontario, and we'd like to involve them in this protection effort.

Incidentally, land trusts are now protecting more private land in southern Ontario than all levels of government put together, including federal, provincial, municipalities and conservation authorities. So we're there doing it. We would like to expand the purposes for which we can conserve land.

In the little presentation I handed out, you'll see that I've included such purposes as trails, recreation, agricultural land, cultural artifacts, buildings, archaeological sites, cultural sites, areas of aesthetic and scenic interest, restoration or enhancement of land and wildlife habitat, water protection, education, all sorts of good things that the Ontario Heritage Foundation can do right now. We appreciate all the good work they've done, but we would like to expand that work. We think we can support many broad aspects of the government's agenda, like the green-belt, efficient infrastructure, fitness and trails, preserving our agricultural lands, water source protection, land protection—we talk about the million acres—supporting provincial policy statements and supporting the international agreements on biodiversity, all by helping us to help you achieve your common objectives. We're here to help, the many volunteers in communities, I'd say from the Thousand Islands to Thunder Bay.

Why we think this is a good idea; we think it will make conservation more effective and more efficient. I don't have 10 reasons; I only have nine reasons why.

Right now, there's sort of a monopoly. Only the Ontario Heritage Foundation and the Agricultural Institute of Canada can perform many of these kinds of protection.

Right now, it's expensive to use those agencies for that kind of protection. Land trusts are run by volunteers, largely by donations, so we think this is a more effective way to achieve these objectives.

Right now, donors are not approaching those existing organizations, because the Ontario Heritage Foundation can't be in hundreds of communities across Ontario, whereas our land trusts have thousands of volunteers out there encouraging people to conserve land and cultural artifacts.

Right now, easements are sort of expensive to operate, because that's being done by the Ontario Heritage

Foundation; that's staff, and it's taxpayer-driven. We would like to see that devolved to local organizations, where it's being done by volunteers etc.

Right now, some existing agreements can't be enforced. We actually have agreements to protect farmland. If, in the worst case, it goes to court, I'm not sure we could enforce those agreements right now. We have agreements on trails. If some landowner in the future decides to fight that, we don't have the tools, through the act, to say, "Yes, we can enforce that."

Right now, we have to partner with the Ontario Heritage Foundation. That's been very positive, but it's a lot of extra work to do that partnering. We'd like to offer sort of one-stop shopping and just get it all done with one organization.

Right now, there are many properties that have many reasons for being protected. Let's say they have a trail, they have natural heritage, they have an historic building on them. We think it's wise to have one organization that can do the whole works.

Conservation is slow right now. The Ontario Heritage Foundation is doing a great job, but it's slow. They have a sort of ponderous process, whereas, working in local communities with volunteers, we can charge in and get things done a little more quickly.

Only one level or other of government can do some of these things right now, whereas land trusts dealing with a charity, which we are, a non-government champion—we think we can get the job done cheaper and more effectively for everybody's benefit.

Here we have a way to effect a lot of government programs, save a lot of money and get things done effectively at no cost. Yes, it's some words in regulations in the law, but it's no cost.

Thank you very much for the opportunity, and I'd love to have some questions.

The Vice-Chair: Thank you very much. We have approximately nine minutes remaining. Ms Munro.

Mrs Munro: Thank you for coming here today to give us kind of a different slant on much of this bill. I wonder if you could explain the process, hopefully not just for my benefit personally but for the committee. You talk about how, as a group of volunteers, you would be more flexible, easier, faster, less bureaucracy etc than the heritage foundation process. I wonder if you could explain for us what happens. Give me a case scenario of someone who has a piece of property and they've made a decision that they want to have it in this state in perpetuity. I'm assuming that would be the kind of circumstance where you might be involved.

Mr Barnett: OK, I'll give you a good example. I was invited up to Durham a week and a half ago on a Sunday. The folks there had invited in some of their friends and neighbours to talk about this. They offered me the opportunity in the old town hall to talk about it.

After the meeting, four or five families came up and said, "This is the right thing to do. We don't want our property to be a subdivision, a golf course or a gravel pit in the next generation. We'd like to make our con-

tribution during our lifetime to see that our land is protected." Right after that meeting, I went out and met with several of those families, and I'll be going up another weekend to meet with more of those families.

We word an agreement with them. It's a legal agreement, so we word it. We get an appraiser in to put a value on it. For example, if your property is worth, let's say, \$300,000 today, but once these restrictions are put in place it may only be worth \$200,000, we can give the landowner a tax receipt for that slice, the \$100,000 difference. We get that agreement approved by Environment Canada and get the appraisal approved so that the Canada Revenue Agency can't come back and question the tax receipt later. They sign the agreement, and we give them the tax receipt. Then we become the stewards of that agreement. So if a future owner makes it his business to turn that into a golf course, we're there to fight that in court.

1030

Mrs Munro: You raised the question that some existing agreements cannot be enforced. I guess, having laid out that scenario for me, now I need to know, what are the tools that are missing, or what is the issue in terms of the problems of enforcement?

Mr Barnett: What we need is a mention in the Heritage Act that land trusts are one of the operating agencies empowered under this act. Under the Conservation Land Act, another piece of legislation, we are specifically empowered to protect natural areas, and that's good. All we need are the same rights as the Ontario Heritage Foundation has to go in and do the sorts of things they can do, which is to protect recreational land, trails, cultural artifacts, archaeological sites—the things I've mentioned. All you really need to do—maybe I'm being simplistic—is just add our name as an operating agency empowered by this legislation.

The Vice-Chair: Mr Marchese?

Mr Marchese: You are, at the moment, able to partner with the OHF, and you've been doing that, I suspect, most of the time or all the time, in terms of wanting to protect properties—you partner with them to do so.

Mr Barnett: When we're dealing with natural areas, we do it on our own. When we have trails to protect or a heritage home of some sort, then we have to go and work with the second agency, which is the OHF in most cases.

Mr Marchese: Right. So that part works. But let me understand: Under the Conservation Land Act, you're also empowered to protect certain lands or properties, and that gives you the additional power you need to do much of what you're empowered to do.

Mr Barnett: Yes. We have the power to protect land—natural areas only—right now. We're asking for the additional things in the bullets at the top of the presentation, which aren't included in the Conservation Land Act. It was a good step forward, but it doesn't include these interesting and necessary things.

Mr Marchese: The other question was asked in terms of what powers you're asking for, and you answered it. You presumably had discussions with ministry staff

and/or political staff; I assume you did. Have you, or is this the first time we're hearing about it?

Mr Barnett: Not too much. I've talked to Rob Leverty, and I think Rob Leverty has brought that forward. You'll be hearing from Rob; he's in the audience. But I have not personally discussed this with ministry staff.

Mr Marchese: So we don't really know what they might want to say about this; we'll get to the Liberal questions and get a good sense of either their support or objection to it, and then we'll understand better what some of the limitations are and why we could or can't do it. Thank you, Bob.

The Vice-Chair: Mr Flynn?

Mr Kevin Daniel Flynn (Oakville): I enjoyed the presentation. My home riding is Oakville. We've got a tremendous amount of interest in heritage preservation, and in the past few years, land preservation has become a huge issue as well.

Everybody brings up the topic of land trusts. They always say we could do better in the land trust business, and they cite examples in Britain and Europe and other places. Can you point to an example in the GTA, perhaps, an area that has fallen under an agreement with a land trust that I'd be familiar with?

Mr Barnett: I'm also on the board of the Oak Ridges Moraine Land Trust and the board of the Oak Ridges Moraine Foundation. There are some excellent examples, in the Richmond Hill-Stouffville-Clairemont area, of large areas that have been protected. They've protected about 2,000 acres. Our land trust, which is on the Niagara Escarpment, has protected 3,500 acres from Caledon up to Manitoulin Island at this point. So it is happening.

Mr Flynn: And would they form a part of the Bruce Trail, or would this be independent of that?

Mr Barnett: Four of our properties are part of the Bruce Trail—these are our properties. Many properties of the Oak Ridges moraine are on the Oak Ridges moraine trail, and we in fact have our own trail system up on Manitoulin Island called the Cup and Saucer and we're working to expand that across the island. So we're working on that right now.

Mr Flynn: The point you were making made it temptingly simple: Just add my name to the act and everything will be OK. Are you sure you have the corporate structure to be an operating agency under the act?

Mr Barnett: Now, that's a question I can't fully answer, but we're incorporated, we're charities, and it seems to be working fine under the Conservation Land Act. I can't see any reason why it wouldn't be applicable here.

Interruption.

Mr Flynn: My friend, before he started to wreck the place, was asking the same question I was thinking of, and that is that to this date you really haven't had a good discussion with staff yet.

Mr Barnett: I believe Ian Attridge has, and he'll be your next presenter. But I have not myself. He's also involved with the Ontario Land Trust Alliance and he's a

lawyer. He will talk about some of the technical aspects of what we're talking about. I'm here talking about the why and the broad picture of how, and he'll talk about the details.

Mr Flynn: Thanks for coming today. I appreciate it.

The Vice-Chair: Thank you very much, sir. It wouldn't be a committee meeting if one of those panels didn't fall off.

1040

KAWARTHA HERITAGE CONSERVANCY

The Vice-Chair: Our next deputation is the Kawartha Heritage Conservancy. They'll be joining us by conference call. Are we connected here? Are we speaking to Mr Ian Attridge? Mr Attridge, can you hear us? Please stand by; we have technical difficulties. Our staff will try and reconnect.

Mr Ian Attridge: Yes, hello.

The Vice-Chair: Mr Attridge, I'm Bob Delaney. I'm the Vice-Chair of the standing committee on justice policy.

Mr Attridge: Thank you for making arrangements for me to attend by conference call and for your patience as we worked out the technical difficulties.

The Vice-Chair: Electronics is still an evolving science.

For your benefit, I'm going to give you a list of the names of the people who are present in the room and their party affiliation. You can write them down as I go: Julia Munro, representing the Progressive Conservative caucus; Rosario Marchese, representing the NDP; Mario Racco, representing the Liberals; Jennifer Mossop, representing the Liberals; Kevin Flynn, representing the Liberals; and Phil McNeely, representing the Liberals.

You have 15 minutes for your presentation. You can choose to use all of it or a part of it. For any time that remains, we'll divide the remaining time equally among the different parties. Please start off by stating your name very clearly for Hansard. Go right ahead.

Mr Attridge: Good morning. My name is Ian Attridge, and I'm the president of the Kawartha Heritage Conservancy. I'm also a lawyer who has been quite active in looking at the issue of conservation easements in legislation across the country and also in Ontario.

Maybe I can start with a question. I had circulated, through the clerk, Mr Koch, a submission late in the day yesterday, and I'm wondering whether committee members have that in front of them.

The Vice-Chair: It has, in fact, been distributed.

Mr Attridge: All right, thank you. I did hear the end of Mr Barnett's presentation. I only caught some of the last few questions, so I'm not sure of the full scope which he may have covered. I will cover a number of things, using the submission that I have made as an outline, and would certainly welcome discussion. I'll attempt to leave a good amount of time for that at the end.

One of the last questions that was raised is the issue of including conservation easements in Bill 60 and therefore

amending the Ontario Heritage Act, and the extent to which staff have been consulted and this issue has been raised. I must say that I have raised it in about at least a half a dozen submissions, whether it's on source water protection, the greenbelt, provincial parks legislation, the growth management plan, planning reform—quite a number of initiatives over the last number of months. I've consistently raised this idea of addressing and really improving easement legislation for the province through Bill 60.

I've also provided extensive comments to staff in previous reviews of the Ontario Heritage Act, and over the last several weeks I've been attempting to talk with one of the senior staff members. We have not been able to connect. We've both attempted it, but haven't been able to make the connection. However, I know that he is quite familiar with many of these issues. This is an opportunity to increase the awareness of your committee and hopefully to pursue further discussions after this.

The Ontario Heritage Act, since 1974, has authorized the Ontario Heritage Foundation and municipalities to hold conservation easements for diverse purposes. In 1994, two other statutes were amended to permit the use of conservation easements for more limited purposes. That's the Conservation Land Act, which I believe Mr Barnett was talking about, and there was also the Agricultural Research Institute of Ontario Act, with a limited application to farmland applications. I was working at the Ministry of Natural Resources at the time of development of the Conservation Land Act provisions and was the lead person involved in bringing that forward from a policy position. I was not in legal services at that time.

The Ontario Heritage Act has a number of provisions—I reference them at the bottom of page 1—that permit both the OHF and the Minister of Culture to hold conservation easements for a variety of really rather broad purposes, and I certainly support that. Municipalities may also hold these easements for cultural heritage purposes under section 37.

In my review of the bill, it does not include any provisions to address enhancements or clarifications or consolidations of these kinds of provisions across the various statutes. The bill appears to be addressing primarily regulatory matters, and that's fine. But I think there's a strong opportunity to enhance the use of conservation easements for this broad suite of purposes under the bill.

Starting on page 2, I highlight some of the advantages of dealing with conservation easements through Bill 60. First, these amendments would be non-regulatory and non-controversial. Many of the measures in the bill are regulatory. They're provisions that can be put in place by municipalities and empower the ministry and other agencies to participate in a regulatory process.

Conservation easements are agreements. They're agreements that are entered into by a landowner and by a qualified agency. They are really something that people can agree to or not agree to. They're negotiated. The terms are flexible. Once in place, they are registered on

the land title and can then protect those identified features through those particular measures in the agreement, typically over the longer term. They're typically written in perpetuity, although they can be written for a more limited period—say, 20 years. They're non-regulatory and they are non-controversial. We have them in place today under the Heritage Act for certain agencies to participate in them, and, as Mr Barnett mentioned, under the Conservation Land Act.

There are a number of gaps in legislative authority for conservation easements, and these limit the achievement of a diverse array of conservation objectives, many of which are under public consultation right now and are part of achieving a host of government objectives. For example, I believe Mr Barnett was talking about the limitation on the use of easements for trail and recreational purposes. Only the Ontario Heritage Foundation can hold easements for this purpose. While OHF is certainly qualified and is accomplishing some trails, they cannot do it across the whole suite of landscapes and initiatives in Ontario.

For example, the Oak Ridges moraine conservation plan identifies the need to link a trail across the whole moraine. It would be quite a challenge for the OHF to be negotiating with every landowner as part of that larger, longer trail, as well as the Ontario Trillium Trail Network that is being developed and, of course, the Bruce Trail. So we need to bring in other players to assist in that activity. This would allow these trails to go over more optimum routes, avoiding some of the changes that may happen. If you have a handshake agreement with a landowner to have a trail, that ownership may change. The access may change over time, causing significant upheaval in the establishment of the trail and users' experience.

The second point in limitation of authority is that only the Agricultural Research Institute of Ontario can hold conservation easements explicitly for preserving farmland. As we're looking at the greenbelt, as we're looking at mechanisms to support the regulatory measures that are in place for the greenbelt and for other parts of the province that are under threat from urban sprawl, we need to bring some more players into the picture to be authorized to use conservation easements. ARIO, as I understand, has not entered any easements at all under this legislation, which was put in place in 1994. We have organizations like the Ontario Farmland Trust which could become more active in this area and support the many greenbelt and food security issues that are arising out there.

1050

There's also no direct authority for the use of conservation easements to protect water resources. We are certainly seeing a variety of initiatives coming into play to deliver on Mr Justice O'Connor's report on the Walkerton issue and source water protection initiatives, yet we do not have any direct authority for conservation easements for water resource protection. We might be able to accomplish that by protecting the land itself, and

that could be accomplished under the Ontario Heritage Act or the Conservation Land Act. However, this interpretation issue could leave a water protection easement open to legal challenge in the future, so we need to strengthen that legal authority.

As I've mentioned before, there are limitations on who can hold conservation easements under the Ontario Heritage Act. Only the Ontario Heritage Foundation and the Minister of Culture are authorized to hold easements for the broad array of purposes. Municipalities are authorized only for cultural heritage purposes, and non-profit organizations, non-profit charities such as my own land trust, which has a natural and cultural heritage interest, are not authorized to work on protecting historic buildings or an archaeological site.

I'll give you an example. We are authorized under the Conservation Land Act to protect shorelines and forests on an island in Stoney Lake just north of us, but we are not authorized to negotiate the historic buildings on that site. That leads to inefficiencies in that we will probably have to have one agreement for the natural features and approach the municipality or the Ontario Heritage Foundation to hold a separate easement for the cultural heritage features.

That leads to inefficiencies, which is really my next point. Easements are typically donated, so the costs to governments of acquiring and protecting certain features on the landscape can be decreased if they're donated. The fact that they are really only a partial interest in the land—the landowner still owns the property, subject to the conditions in the agreement. In that case, even if easements were purchased, they would be less than the full fair market value of that land. So it is really a cost and economic efficiency argument to enhance the opportunity to use conservation easements for this suite of diverse purposes.

Also, charities such as our own tend to rely on volunteers primarily. That, again, reduces the costs.

The Vice-Chair: Mr Attridge, you're down to about three and a half minutes. If you wish to have any questions, this would be a good time to wrap up to allow each party a chance to ask you one brief question.

Mr Attridge: All right, thank you. I have a number of recommendations here on pages 4 and 5, really to consolidate the pieces of legislation, to clarify the terms used and to strengthen the ability of easements to be defended through supportive amendments. I'll open it up for questions now, and we can go into those details if necessary.

The Vice-Chair: Thank you very much. Our leadoff in questioning will be Mr Marchese.

Mr Marchese: Ian, just a quick question: Is it possible that, if the Agricultural Research Institute of Ontario actually entered into easement agreements, it could address some of the concerns you raised? At the moment, you say, they haven't entered into any easement agreements. That would be one question. The other one is, if it isn't possible to permit the current institutions to do what you want, what objections do you foresee there might be

by either any one of these agencies, or the government, for that matter?

Mr Attridge: The ARIO certainly could enter into these agreements. They were initially authorized to purchase easements in Niagara region. In fact, a regulation limits the application of that section to the tender fruit lands of Niagara, so it does not apply to other parts of the province at the moment. ARIO could certainly enter into it, but I'm not sure that they would be able to negotiate the kinds of arrangements with landowners all over the province. When we look at land trusts generally, it is the local land trusts or non-government land trusts that are able to establish the kinds of relationships that allow people to feel comfortable in making a donation of those easements. So certainly I'd welcome it if they were doing that, but I think we need other players in place, and they are also limited in whether they could pass it on to other organizations under the legislation.

The Vice-Chair: Thank you, Mr Attridge.

To the governing side, Mr Flynn.

Mr Flynn: I have the same question that I asked the previous speaker, Mr Barnett, and that was about the corporate structure of the Ontario Land Trust Alliance and its ability to simply be named in the act and perform the functions you've just outlined.

Mr Attridge: The Ontario Land Trust Alliance is the umbrella organization of about 40 land trusts across the province. I would anticipate that you would want to authorize, like the Conservation Land Act does at the moment, charities that are incorporated and have a conservation mandate. They are the 40 land trusts in the province. You wouldn't name them specifically; you would probably adopt the same provisions in the Conservation Land Act which authorize non-profit charities to enter into these agreements.

Mr Flynn: A short follow-up question: You said that you had raised this point with our staff. Have you raised it specifically concerning its inclusion in Bill 60?

Mr Attridge: I have specifically referenced Bill 60 in oral presentations to the Greenbelt Task Force and in written submissions on the number of subjects I mentioned.

Mr Flynn: To the Ministry of Culture, though?

Mr Attridge: Not recently, no. I've been attempting to do that, but we have yet to make that connection.

The Vice-Chair: Ms Munro?

Mrs Munro: A number of the issues that I had concern about have been raised in the discussion so far, so I'm going to ask a very narrow question. On page 2 of your presentation, when you're talking about the role currently of the Ontario Heritage Foundation and the kinds of requests for its work, you go on to say that, for instance, provincially supported trails, such as the Oak Ridges moraine and so forth, "must be achieved through outright purchase or following roadways." How would you envisage this to be altered, in terms of what kind of assistance you are looking for from any changes in legislation?

Mr Attridge: In my proposal, the legislation would authorize conservation charities, land trusts, to enter into conservation easements for trail purposes with private landowners. So with a landowner who would be willing to do this—they would agree to it—it could cross through the back part of their farm, it could follow the optimum route of the trail. Often, the trails will get rerouted to follow roadways because it's not accessible across the optimum route. Does that answer the question?

Mrs Munro: Thank you.

The Vice-Chair: Thank you very much for your deputation this morning.

Is Mr Peter Currie in the room at the moment? No?

Ladies and gentlemen, we'll take a short recess. Would you please be back here at 10 minutes after 11.

The committee recessed from 1058 to 1123.

ARCHITECTURAL CONSERVANCY OF ONTARIO

The Vice-Chair: Catherine, welcome. You don't mind going a few minutes early?

Ms Catherine Nasmith: I'm ready. Just give me a second. I can't see. My glasses are fuzzy; you're backlit.

I'm here with a little bit of a scramble because the notice of when the hearings were happening was a bit short.

The Vice-Chair: Just before you start, you have 15 minutes for your deputation. You can speak for all of it, if you wish. If you choose to leave some of it at the end, then we'll divide the question time equally among the three parties. Just before you start, please state your name clearly for Hansard. Thank you for coming and especially for starting a little earlier than you anticipated.

Ms Nasmith: OK. I'm Catherine Nasmith. I'm an architect and heritage activist. I'm here speaking for myself and for the Architectural Conservancy of Ontario. I'm the vice-president there. I should let you know, too, that we were hoping to get a spot on Wednesday of next week, so what the conservancy will do is follow up with a written submission. So I can't give you my remarks today.

Let me just go. When I started as chair of the Toronto preservation board in 2000, I had two goals, both of which were important to changing the culture of architecture and city building in Ontario: One was to see Doors Open established and the second was to get the power to say no to demolition. It's wonderful to be able to sit here before you with Doors Open firmly established and be on the brink of having that power.

I'm one of Ontario's busiest activists. I'm vice-president of the ACO and past chair of the Toronto preservation board. I've been awarded the Queen's jubilee medal for work in heritage advocacy in Ontario. I publish Built Heritage News, an e-journal which has 800 subscribers and climbing. Over the past five years, I've been involved in raising issues around heritage, issues such as the Concourse Building, planning south of Fort York, and I've worked with the residents of Blythwood Road in

trying to save a neighbourhood landmark. I'm telling you all this not to brag, but really just to give you a sense of who I am, what I've been through and what life is like in the trenches in Ontario, trying to work without a decent law.

The ACO is a volunteer organization. We're in the business of advocating for Ontario's heritage buildings. We work to save buildings, and it's almost impossible. Heritage activists are working in impossible conditions.

The ACO has had significant victories over our 70 years. Most recently, our members achieved an important landmark legal decision at the OMB on a case in Chatham where the panel member had to remind the municipality of their obligations to protect heritage, and a recent case in Lakeshore, near Windsor. In that decision, the court ruled that municipalities could not refuse to designate because the owner was hostile. We've intervened and purchased properties and, often with volunteer labour, returned buildings to useful life in their communities. The Walkerton town hall is an example and, our earliest success, Barnum House in Cobourg.

The ACO wholeheartedly supports this bill and, not to put too fine a point on it, we're desperate to see it as law.

What I want to talk to you about this morning is why it's so important to have the power to say no to demolition and how not having it has been destructive, not just in the literal sense of losing buildings but in how weak law has undermined our ability to create a built environment that's worthy of us.

Doors Open has been key to getting communities across Ontario involved in discussing the importance of our built heritage and it has demonstrated the strong interest in preserving our best places. I believe it has contributed to bringing attention to our weak laws.

The ACO has a nagging doubt about the possible loophole available in giving property owners the ability to appeal to the OMB, but we're hoping that the OMB will join in the renewed spirit of stewardship embodied in these changes. The other nagging doubt is that the municipalities won't always act in the best interests of heritage, and if citizens don't have the right to appeal, important heritage buildings will be lost. But both of these concerns should not slow the government in moving Bill 60 forward as fast as possible.

All across the province, members of the ACO are in the trenches fighting to preserve their community cultural legacy. The improvements in this bill will bring an important level of certainty into the system, in particular in communities with councils that understand the importance of heritage to quality of life and place.

With this law, Ontario is finally coming of age, declaring that our built culture is important; not just kind of important or sort of important, but something that as a society we are committing to protect, not just for six months but, dare I say it, in perpetuity. What it offers to municipalities smart enough to take advantage is the opportunity to make sure that everything of value is kept, that only the unimportant is removed. For the first time as a society, we can again take an intergenerational approach to city building.

What people really dread is losing a beloved landmark and having it replaced with something crummy. We can generally live with losing a good building if the replacement is also worthwhile, but just imagine how great it would be if we got both to keep the good old building and to build a great new building.

1130

In England, some very serious discussion is going on of developing lists of buildings that communities would like to see removed—the flip side of buildings with heritage protection. That's very interesting if you think of our towns being made up of our best work. I think when people started building in Ontario, they had a real strong sense of building for the future.

I recently ran across this quote in *Toronto Old and New*, a civic boosterism publication of the day, published in 1891: "A city's commerce is not built up without making vast draughts on the toiler's brain and muscle. In his labours, both for himself and the community may there always be an ample and lasting reward."

For me, the big words in that are "and the community." To me, the "ample and lasting reward" is to have the work appreciated by the succeeding generations that it was actually built for. To do anything less demeans the builder and our own building process as well.

Communities do get this.

I'm going to go through a little history of a recent bunfight, as we call it in the business, just to show you the kind of never-never land that is created by having weak laws.

Two years ago, I got a call from Eric Melis. He owns a house on Blythwood Road in Toronto. The house across the street had been bought by a developer. The developer wanted to tear it down and build three crummy houses. Eric said, "I love that house. I don't want bad houses on my street." He was looking for help.

I said, "This won't be easy, and you're going to have to organize your whole neighbourhood. By the way, if you don't want to have to keep repeating the battle every time a house on your street is sold, you're going to have to be thinking about a heritage conservation district."

Eric said, "I can't do that. I've got a family. Surely the city can protect the house."

I said, "I wish that were true."

Eric Melis is very tenacious. It took two years of going to the OMB, of organizing the neighbourhood. The city stood very strongly behind the community on this one. And then the developer found a loophole in the law, went and applied for a demolition permit on the basis of a building he had no intention of building. The city fought him on that. The developer went to Divisional Court. The Divisional Court said to the city that they had to issue the demolition permit. And then the developer was still going back to the city, saying, "I want to build three houses. I'll save a piece. I'll save a bit," and there was this crazy negotiation going on. It went on for 18 months.

Finally, it became very clear to the developer that even though he had a right to take that building down, he was not going to get permission to build the houses he

wanted. So he put the house back on the market, just to see what would happen. This is 18 months of people hanging on by their fingernails, really being concerned, residents upset. The house did sell, and it was sold to somebody who wanted to restore it.

So that story had a happy ending. But it's loony. That kind of process is absolutely ridiculous, and nobody should have to go through that kind of stuff to save a neighbourhood landmark.

At the same time the developer bought that house, there was no protection on it; so he didn't know. He got caught in an awful situation.

What we're saying is that this law will bring certainty. "No" is very, very important.

The Vice-Chair: If you wish to allow the parties to ask you some questions, you may want to leave a little bit of time.

Ms Nasmith: OK. How am I doing?

The Vice-Chair: You've got about six minutes left.

Ms Nasmith: Six minutes? OK. I think I've pretty much covered what I wanted to talk about on the lunacy. But, really, it is. Every time there is discussion of a heritage building, this is what happens. Heritage people who want to keep these landmarks that were so carefully built have to be crazy—and we are considered kind of nuts.

It's destroyed the whole culture of making beautiful things. I think, as an architect, if the work of the Group of the Seven at the Concourse Building isn't sacred, why should I bother? Why should I try to make the best buildings I can?

So "no" is absolutely critical. That's my key message here.

People have figured out how to save buildings with a weak law. We do save a lot but it's painful.

I just want to talk a little bit about certainty here. There's a member of the ACO who owns a building on the main street of Port Hope. Now, any of you who have been to Port Hope notice how spectacular that main street is. It has taken 10 or 15 years of real commitment on the part of everybody on that street to make that happen, and it has become a heritage district late in the game. But that's an example of real, serious local commitment to preserving. The owner of this building said, about being in a district, "What's so great about being in a heritage conservation district is, I know that I can invest in my property and nobody's going to build something awful next door." The certainty in the system that saying no creates really demands excellence of everybody.

I've abridged what I've said a little bit, but I think you've got the message.

The Vice-Chair: Thank you. We'll have time for one quick question from each party.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): It's really not a question; it was more just a comment. First of all, I want to congratulate you for coming in. You need not apologize in any way or make comments that you shouldn't be recognized for what you've done for Doors Open, for what you've done by

receiving recognition from the Jubilee medal. I think that's wonderful.

We have something in common, because I've done both things too. I'm delighted to be here as an MPP, but in my community, I lobbied to have the first Doors Open, and we got it. I did get a medal for that too.

Ms Nasmith: They're nice to get.

Mr Brownell: I want to say, it's very important that you make the address to this committee. The positive comments you've made about where you've been in the past and where we have to go in the future are extremely important. I just wanted to say that to put in on the record.

Ms Nasmith: I think we are now just reaching the beginning of having heritage conservation in Ontario. We haven't had it until now.

Ms Mossop: Just a very quick comment. It's nice to see you again. I met you at the dual conference in Hamilton not that long ago. I just have to commend you for your passion, your hard work, your conviction and your unrelenting will to do the impossible. I'm so glad that you feel we're giving you the tools you need now, although I think heritage in Ontario has had the best tool in you. I would never want to fight you. I say this because at the conclusion of the dual conference, we decided that what we really should be doing is introducing legislation to introduce capital punishment for crimes against heritage. That's how tough this group is. We commend you for all you've done.

Mrs Munro: I certainly appreciate your being here. In a former life, as the person responsible for the consultations that have led to what we have today, I recognize how important moving forward is.

I wanted to ask you a question that I remember being one that was raised, and that is the question of the expertise that lies within municipalities in regard to designations, and if you have anything to offer us in looking at that particular problem that might give a higher level of comfort to people. It seems to me that within our smaller communities there may not exist the same level of expertise, obviously, as we have here.

Ms Nasmith: Let me just speak to that. I think that's actually a very important question. I serve on the municipal heritage committee in Muskoka Lakes, and we're working with a council that's really just getting its feet wet in heritage preservation. They're very nervous about designating a building. Somehow they don't feel empowered to protect the community's culture, and there are some excellent people on that panel doing work.

The other part of that is that I think the development community deserves certainty. When a property is sold, people should know whether or not it's important. We've been sitting on a 30-year period of relying on volunteers to produce all of that information, particularly in small communities where there isn't a heritage plan or there aren't the resources. But even in the city of Toronto, we've only scratched the surface. The point is that follow-up resources need to go into the system to create the expertise in order to establish what is important.

Mr Marchese: Some quick points, Cathy. I welcome you here. I want to say that all three political parties support this bill. We are likely to have the Liberal government introduce this for third reading, I suspect, next week, which would be good. Then we could debate it and pass it. So I don't fear that it will fail. It will pass, but some amendments will be made.

One of them, by me, will be the issue you touched upon, which is that this should be changed to allow third parties to appeal to a board the consent of a municipality to a demolition. We're going to introduce that motion and debate that, because we think it's a fair and reasonable thing to do. It won't stop this bill, I suspect, but we'll at least have a debate on that.

I wanted to say that Doors Open really helped, through its advocacy, to educate and politicize a whole lot of people and to create a meaning around the issue of

heritage. In that regard, I wanted to thank you and the group for doing that.

I wanted to ask you a quick question on cemeteries. I have an interest in protecting cemeteries, personally. There are 3,000 inactive cemeteries, and I suspect they're probably all registered. Do you have an opinion on that?

Ms Nasmith: This question has been put to me before, and in each case I have referred it to the Ontario Historical Society, which has done a lot of work in this area. My interest really is in buildings.

Mr Marchese: Very good. Thanks.

The Vice-Chair: Catherine, thank you very much.

Is Mr Peter Currie in the room? Going once, going twice—gone.

As we have no further deputants on the agenda, this committee stands adjourned.

The committee adjourned at 1142.

CONTENTS

Thursday 25 November 2004

Subcommittee report	JP-373
Ontario Heritage Amendment Act, 2004 , Bill 60, <i>Mrs Meilleur / Loi de 2004 modifiant la Loi sur le patrimoine de l'Ontario</i> , projet de loi 60, <i>M^{me} Meilleur</i>	JP-373
Ms Diane Clendenan	JP-373
Escarpment Biosphere Conservancy.....	JP-375
Mr Bob Barnett	
Kawartha Heritage Conservancy	JP-378
Mr Ian Attridge	
Architectural Conservancy of Ontario	JP-380
Ms Catharine Nasmith	

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JP-19

JP-19

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Standing committee on justice policy

Ontario Heritage
Amendment Act, 2004

Comité permanent de la justice

Loi de 2004 modifiant la Loi
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 1 December 2004

Mercredi 1^{er} décembre 2004*The committee met at 0904 in room 151.*ONTARIO HERITAGE
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT LA LOI
SUR LE PATRIMOINE DE L'ONTARIO

Consideration of Bill 60, An Act to amend the Ontario Heritage Act / Projet de loi 60, Loi modifiant la Loi sur le patrimoine de l'Ontario.

The Chair (Mr David Orazietti): Good morning and welcome. I'd like to call the committee to order this morning to consider Bill 60, An Act to amend the Ontario Heritage Act. Members have the agenda in front of them and submissions as well.

ROMAN CATHOLIC
ARCHDIOCESE OF TORONTO

The Chair: I'd like to call the first presenter forward, please, the Roman Catholic Archdiocese of Toronto. I'd just ask that you introduce yourselves for the purposes of Hansard recording. As well, you have 15 minutes for your presentation. If you leave any additional time from that, there will be an opportunity for questions from all parties and the time will be equally divided. Good morning, welcome, and please proceed.

Bishop Richard Grecco: My name is Richard Grecco. I'm an auxiliary bishop of the Archdiocese of Toronto. With me this morning are John McGrath, on my right, vice-chancellor of temporal affairs for the archdiocese; David Finnegan, on my far left, director of planning and properties; and Peter Lauwers, counsel to the archdiocese. Thank you for this opportunity to address you on Bill 60.

The Roman Catholic Archdiocese of Toronto extends beyond the boundaries of the city. The archdiocese owns many buildings that might well be considered to be heritage sites and has spent considerable sums in maintaining some of them. Some of these churches are listed in the appendix. Most recently, for example, the archdiocese spent \$4 million on St Michael's Cathedral in order to protect the foundations, \$2 million to \$3 million to restore St Paul's Basilica, and \$1.5 million to restore St Anne's parish church in Toronto. There are few property owners in Ontario that would have more buildings of

historical and architectural interest than the Archdiocese of Toronto.

We support parts of Bill 60, and we join with the province in its desire to ensure that every possible avenue be explored for the maintenance of heritage sites, but there will be regrettable occasions when we cannot continue to own and maintain certain buildings. Changes in demographics and in church attendance patterns will require the closure of parishes that are no longer self-sustaining. We must be able to dispose of surplus properties at fair market value in order to raise funds to re-invest them where they are needed in heritage preservation and in other activities, so that the archdiocese can continue to respond to the changing needs of the Catholic community in the greater Toronto area.

Bill 60 would change the Ontario Heritage Act from a statutory regime, under which property owners can be reasonably compensated by municipalities for heritage properties, to one in which the interests of property owners can be expropriated without compensation. This is a form of site-specific heritage tax that is not fair to property owners.

If the current version of the act can be criticized for leaving too much control in the hands of property owners, Bill 60 must be criticized for leaving too much control in the hands of municipalities. This is perhaps not surprising, given that what appears to have been the one-sided input into the bill. We were surprised to learn that while there has been extensive consultation with heritage groups and municipalities, there has been virtually none with property owners, like the archdiocese, who will bear the real burdens of the bill.

As an owner of numerous properties with potential heritage value, the Archdiocese of Toronto feels very much caught in the middle. Our spiritual and financial commitment to the preservation of historic buildings is probably unequalled in Ontario. Our interest in disposing of surplus properties is in large part about ensuring that we are able to dedicate the proceeds of sale to maintain other properties.

The Archdiocese of Toronto believes that with appropriate consultation, a balanced approach to the needs of property owners and the needs of heritage preservation can be achieved. That is why we are recommending that Bill 60 be withdrawn from the legislative agenda and be recirculated for further development in consultation with all of the stakeholders that will be affected by it, includ-

ing municipalities, heritage groups, property owners, land developers and professional bodies with expertise, such as the Ontario Professional Planners Institute.

0910

An inequitable burden will fall on certain property owners. There is no doubt that Bill 60 would inequitably burden certain organizations far more than others. Places of worship are often the oldest and most significant buildings in communities across Ontario. Religious organizations are essentially voluntary, and they rely on the contributions of congregations. They operate on a break-even basis and are simply not able to afford the considerable expense that this heritage tax would impose on them. It is important to recognize that payment of this additional expense will only come at the cost of other important services: ministry and charitable services that the archdiocese provides to the people of Ontario. The poorest citizens among us should not be compelled to bear a disproportionate burden if, as can be expected, funds available for charitable activities are diverted to extraordinary building maintenance.

Mr Peter Lauwers: The balance of our remarks will focus on proposing improvements to Bill 60 to try to redress what we see as its current imbalance. If the measures in Bill 60 come into force, we fear that municipalities will no longer exercise reasonable restraint in the designation of heritage sites. In the past, fiscal discipline has led to reasonable compromises, such as the preservation of facades rather than entire buildings, for example.

The basic problem with Bill 60 is that it, by giving all power to the municipalities, does not create enough ground for reconciling the legitimate needs of property owners with the interests of heritage preservation. The right of an owner to an OMB appeal is insufficient, in our view, because, in part, Bill 60 does not provide the OMB with any criteria for determining heritage value or the fair entitlement of affected owners.

We are recommending the addition of language found at page 5 of our brief: Where the owner would suffer financial hardship as a result of a refusal to issue a demolition permit or where the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural value, heritage value or interest in the municipality, then the municipal board should be empowered to specify as a term or condition of the appeal that the designating authority acquire the property for fair market value, or the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the owner.

We think the addition of these provisions—and probably others we haven't had time to think up yet—will encourage reasonable negotiations with municipalities. Density transfers have, for example, provided funding for heritage preservation across North America, and also in Toronto there are good examples.

We also have concern about bias and the composition of the appeal process and the Conservation Review Board. Section 25.1 of Bill 60 would permit a member of

the Conservation Review Board to be appointed to sit on a panel of the Ontario Municipal Board reviewing an appeal. In the view of the Archdiocese of Toronto, this imports a bias into the appeal process, since the Conservation Review Board will already have been involved in the decision-making process.

We address two recommendations on this subject at page 6 of the brief, including one that specifically requires that the member who is from the Conservation Review Board not be the only member of the Ontario Municipal Board sitting on an appeal.

In terms of transitional matters, under Section 34.7 of Bill 60, unless the building is in the course of demolition at the time the bill receives royal assent, the new act would force the owner to start all over again. The Archdiocese of Toronto believes that retroactive legislation, which is what this is, is administratively and substantively unfair. We're proposing a change on page 7 of the brief in order to address that particular issue and bring some fairness into the process.

Bishop Grecco: In 1982 the Supreme Court of Canada identified the moral basis of the Ontario Heritage Act. I quote: "The preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, certainly not in total disregard of the property owner's rights."

The Archdiocese of Toronto believes that reasonable respect for this basic principle should be maintained in any amendments to the Ontario Heritage Act. This respect has motivated our recommendations. We urge the committee not to report this flawed and unbalanced bill for third reading, so that a fuller and more open consultation process can occur and more ideas than those put forward in this short brief can be explored by all the stakeholders.

Thank you for this opportunity to address you on Bill 60. We would be happy to answer your questions.

The Chair: We have about four minutes remaining. We'll start with the opposition party.

Mrs Julia Munro (York North): I appreciate the aspect that you've brought here. I think all of us recognize the kind of built heritage that the churches collectively represent, and their importance. I think the main message you've provided here for us today in regard to the need for balance and for looking back at that Supreme Court decision as a basis for making any amendments is extremely important for us to consider.

I certainly look forward to comments from the government with regard to ways in which they will want to respond. Certainly I will be looking very closely at the amendments you have proposed, which we might bring forward if we feel that the government is not responding.

The Chair: Government party.

Ms Jennifer F. Mossop (Stoney Creek): My name is Jennifer Mossop. I'm the parliamentary assistant. I didn't catch your name, the second gentleman who spoke; I'm sorry.

Mr Lauwers: I'm Peter Lauwers.

Ms Mossop: Did you have absolutely no consultation at all with any of the ministry staff leading up to?

Mr Lauwers: Not leading up to the bill.

Ms Mossop: Have you since?

Mr Lauwers: We have since.

Ms Mossop: Have you received any—

Mr Lauwers: We received no comfort from the ministry staff.

Ms Mossop: If there is an opportunity for us to work with you—first of all, some of you probably have seen instances in your communities where lovely old buildings have disappeared because the municipalities had no way of preventing their demolition. I'm assuming you might have witnessed something of that nature.

Mr Lauwers: I think the key message from us is that we don't oppose the goals of this bill; we oppose the methods. We think they are actually counterproductive in some ways. We look forward to a consultation process that would allow other ideas to be explored to provide for a more balanced outcome.

Ms Mossop: Do you think the ministry could work with you to look at potential resources for the churches?

Mr Lauwers: There are all kinds of different ideas that could work. Density transfer is one of them. The trust that's created by the bill is a good idea too, but the demands of heritage preservation are much more extensive than any trust endowment could probably equal. We would welcome the opportunity to work with the ministry and with the government on improving this bill, and with other affected groups as well, because we're not the only ones.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): You made reference in your opening remarks here to the sums spent on some restoration—I guess it is restoration—done on St Paul's Basilica and St Anne's. Could you explain a little bit about what type of work was done there, exterior restoration? Were these buildings in a bad state of repair exteriorly?

Bishop Grecco: Mr Finnegan is our property and planning management officer, so I'd let him respond to that.

Mr Brownell: I'm quite interested in knowing what kind of work would have been done for that money.

Mr David Finnegan: In the case of St Michael's Cathedral, \$4 million was recently spent on repairs just to our foundations, to make sure the building was watertight and structurally sound.

We've also spent monies internally, repairing plasterwork in the cathedral, painting, and for removal of environmentally sensitive materials. At St Paul's Basilica we have replaced the roof. We have carried out repairs on the mortar and the stonework there. We did painting, again, internally, and stained glass window repairs. That's the nature of the repairs we're looking at: protection of the building envelope, protection of the heritage of the building and a lot of internal repairs to keep the building properly maintained.

The Chair: That's all the time we have for questions with this group. Thank you very much for your presentation.

0920

MARCIA CUTHBERT

The Chair: I'd like to call the next presenter. Marcia Cuthbert, come forward, please. Good morning, and welcome. Please identify yourself for the purposes of Hansard. You'll have 15 minutes for your presentation. If you leave any time remaining, we'll have an opportunity for questions.

Ms Marcia Cuthbert: Mr Chairman and members of the committee, good morning. My name is Marcia Cuthbert. I'm an urban planner, now retired. I'm appearing today as a result of having responded as an individual to the Ministry of Culture's December 2002 report entitled *Changes to the Ontario Heritage Act Discussion Guide*, rather than as a representative of any of the organizations to which I belong.

Currently, I am a member of the Toronto and East York Preservation Panel and chair of its legislation subcommittee. The chair of the Toronto and East York Preservation Panel, Don Purdy, is here with me today.

Briefly, the Toronto and East York preservation panel is a city-appointed body dealing with heritage matters affecting the central part of the amalgamated city of Toronto. We report to the Toronto Preservation Board, which is the official municipal heritage committee appointed by Toronto city council for the entire city under the Ontario Heritage Act.

To give just a couple of examples of what the panel does, we have been assisting the city's preservation services staff by carrying out research on the buildings on Spadina Avenue between Dundas and College Streets for inclusion on the city of Toronto's inventory of heritage properties. Also, because Kensington Market is located within the geographic area covered by our panel, I chaired an ad hoc working group of members of the local community to have the Kensington Market area designated by the Historic Sites and Monuments Board of Canada as a national historic site for its role as an immigrant reception area. This matter is to be considered by the Historic Sites and Monuments Board in the spring of 2005.

As with many people who are part of the volunteer heritage community, I am a member of a number of heritage organizations. I am currently chair of the communications committee of Community Heritage Ontario, the province-wide organization of municipal heritage committees. I'm also a member of the Ontario Genealogical Society and served on the photo exhibit committee for their conference in May of this year. I'm a member of one of the jury panels for the Heritage Toronto Awards, and I played a similar role for one of this year's Ontario Historical Society's awards. I have been a member of the Architectural Conservancy of Ontario since the 1960s. But as I said, today I am appearing on my own behalf.

There are three main points I would like to make today. The first one is that I would like to thank Premier McGuinty, his government and Minister Meilleur for introducing the long-awaited amendments to the Ontario

Heritage Act contained in Bill 60, and for shepherding the bill through the second reading stage. I would also like to thank the other parties for giving their support to this urgently needed legislation. I would also like to thank this committee for providing the opportunity for these public hearings and for the interest you have shown in listening to the presentations being made to you, both last Thursday and today.

Most of all, I would like to thank those who worked so hard to include in the bill various much-needed provisions such as, among others, the provision to strengthen the control over demolition of designated properties; the provision to give municipalities the power to impose controls on areas that are defined as areas of study for proposed designation as heritage conservation districts while the study is underway—this was something recommended as far back as 1977, so I'm glad it's finally being brought forward; and also the proposal to allow municipalities to make bylaws establishing standards for the maintenance of the heritage attributes of designated properties. These are just some of the important provisions contained in the bill.

The second point I would like to make is that I believe the heritage community is united in its support for the legislation. For example, at last Thursday's hearing, you heard the representative of the Ontario Genealogical Society urge that the protection of cemeteries be specifically mentioned in the act. As someone with membership in both built heritage and genealogical organizations, I can say that I am strongly in agreement with the protection of cemeteries and I am very much in favour of finding a solution that will satisfy the concerns being expressed about cemetery protection. Putting it another way, I do not want anyone to be able to cause further delay by suggesting that there might be differences within the heritage community. I believe we are united, in that all of us have the same objective of protecting our heritage.

My third point has to do with the urgency of proceeding with the legislation without further delay. In my working life, I was an urban planner with the city of Toronto planning board and, later on, in 1973, was appointed as head of the historical preservation division of the Toronto Historical Board. While on the planning board's and the Toronto Historical Board's staffs, I prepared numerous briefs on the board's behalf, urging the province to provide effective legislation. In fact, I have a binder of all the reports I prepared.

My first such brief for the Toronto Historical Board was prepared in January 1975—that is over 29 years ago—providing comments on the first reading copy of the original Ontario Heritage Act, outlining both its potential benefits and some suggestions for improvement. That report was adopted by Toronto city council and forwarded to the then minister. Then, two years later, in 1977, I prepared a report entitled *Problems with the Ontario Heritage Act and Proposed Solutions*. That report was also adopted by Toronto city council and forwarded to the minister. Again, in 1980—but I won't go on.

Instead, I've submitted a four-page appendix listing the efforts of the Toronto Historical Board and the city of Toronto, actually from 1958 up to 2002, to obtain effective heritage legislation.

By the way, I might mention that a number of the suggestions contained in my reports were implemented when some housekeeping amendments to the act were made in the past, most notably the one which allows municipalities to refuse demolition of a designated heritage property when no permit has been issued for a replacement building. That amendment was effective in certain circumstances but was intended as an interim measure until such time as more comprehensive provisions such as the ones now contained in Bill 60 would come into force.

Now it's December 2004, and we've gotten farther than we ever have before. A number of amendments to the bill have been suggested by various speakers. My hope is that these can be worked on without delay since time is running out for some of our heritage properties. The ministry has a fine staff and I hope they will be provided with all the support and resources they might need to integrate the various suggested amendments into the package in a timely manner so that we will finally have an effective, state-of-the-art Ontario Heritage Act. Thank you.

0930

The Chair: Thank you very much. We have some time left. We'll start with the NDP caucus.

Mr Rosario Marchese (Trinity-Spadina): Thank you, Mr Chair. You're so kind. Thank you, Marcia. The NDP is supportive of this bill.

Ms Cuthbert: Yes, I know.

Mr Marchese: We have no interest in delaying it. We will be making amendments, however, tomorrow—three of them. It doesn't mean that it needs to be delayed; it means that the government hopefully will reflect on them, because they know what's coming, and either accept the amendments or change them. Then it can go to third reading and it's all done.

The three amendments we intend to make are:

One, we want to protect cemeteries, and we don't think there is very sufficient or good protection of cemeteries.

Second, if a municipality decides not to designate a building that people think should be designated, there is no third party intervention or appeal, which we think is a useful thing to put in the bill.

Third, we know that heritage buildings are very expensive to maintain, and there's no provision whatsoever from the province to be supportive of that. I think we should be doing something or introducing a measure that would be helpful to people who need to maintain the buildings and don't have the resources to do so. What do you think?

Ms Cuthbert: Well, the third point that you make—they're all good points, but the third one is really important. We used to have what was called the designated property grants program, but that was cancelled. That

was one of the few things we could offer to people when they were reluctant to be designated. So I think your third point is something we're really looking forward to.

Mr Marchese: And you reserve judgment on the others?

Ms Cuthbert: No. I'm supporting the other points as well.

Mr Marchese: OK. Thanks very much.

The Chair: The government caucus.

Mr Bob Delaney (Mississauga West): First of all, I want to thank you for your very interesting deputation. We all certainly acknowledge your very rich personal portfolio of community involvement and in heritage preservation.

I know in my own case, coming from Peel region, how the imperatives of development have cost us so many hundreds of buildings, many of which, a valid argument could be made, are indeed heritage properties.

With that in mind, what I'd like to ask you is this: Some deputants have suggested additional and often lengthy consultation processes before the bill is passed. Can you describe from the benefit of your experience some of the risks of inaction by the government of Ontario with regard to heritage properties?

Ms Cuthbert: I'm not really good at public speaking, so the fact that I came here today indicates how important I think this is. I may not be able to think of the answers to your question off the top of my head. There have been many designated properties that have been demolished because there is not the power to say no, finally, to demolition. With a 180-day delay, it really is not adequate to ultimately prevent demolitions. This bill provides the answer to that long-time problem.

Mr Mario G. Racco (Thornhill): My question is a simple one: The prior speakers asked that this bill be sent for more consultation, and I suspect we will be speaking about it for three to six months, as an example. Would that, in your opinion, be a problem?

Ms Cuthbert: All I can say about that is that there has been consultation for the last 29 years or more. The ministry has introduced these discussion papers and we have all responded to this many times. So there has been a lot of consultation.

Mr Racco: But would three to six months be a problem?

Ms Cuthbert: What I'm afraid of is that it will be like the other times: Suddenly there will be an election and the whole thing will go back to square one.

Mr Racco: Thank you. The election won't be until 2007.

Ms Cuthbert: I know, but this has happened so many times before.

Mr Racco: You speak from experience.

The Chair: We'll move to the Conservative caucus.

Mrs Munro: Thank you very much for coming here. You have to be congratulated for your patience in being able to provide us with a history of 29 years. Those of us who feel that sometimes government moves slowly have a new example to demonstrate that.

I wanted to ask you just one question with regard to the cemeteries, because we've certainly heard some concerns expressed that way. In the bill, there is—I'm not sure it's specifically in the area of a definition, but the understanding is that we're talking about built heritage and that built heritage would include cemeteries. It also includes fences, for instance, if they were deemed to be part of that whole package of the need to preserve. I wondered if you could comment on why cemeteries specifically? Is there evidence of kind of danger if it's just under the assumed category of built heritage?

Ms Cuthbert: There is someone here today who will be speaking on behalf of the Ontario Genealogical Society, but at a recent meeting it was explained to us that at some of these hearings, lawyers would ask witnesses, "Are cemeteries mentioned in the Ontario Heritage Act?" and the person would have to say no. They want to make sure that it's clear to everyone that cemeteries are included in properties that can be designated. The speaker, I'm sure, will explain it more fully.

Mrs Munro: Thank you.

The Chair: Thank you very much for your presentation.

COMMUNITY HERITAGE ONTARIO

The Chair: I'd like to call on Community Heritage Ontario. Good morning, and welcome. Please speak your names into the microphone for the purposes of Hansard. You'll have 15 minutes for your presentation; if you leave time remaining, we'll have an opportunity for questions.

Mr Paul King: My name is Paul King. I'm the president of Community Heritage Ontario. Beside me is Bob Saunders, who is the past president and a member of the board.

Community Heritage Ontario is pleased to submit comments on Bill 60, which is before the Legislature. We welcome the initiative of the government to substantially amend the Ontario Heritage Act. It's legislation in need of strengthening to provide protection for our cultural heritage similar to that in other North American jurisdictions. What's proposed here is not radical; it's really bringing Ontario up to the level of other jurisdictions in North America.

In case you're not aware, Community Heritage Ontario is an association of municipal heritage committees established under the Ontario Heritage Act. There are about 125 communities with these committees, and about 106 of those are members of CHO. These municipal heritage committees, together with the councils they advise, are the bodies responsible for the administration of parts IV and V of the act, so they deal with designation and protection of properties and the establishment of heritage conservation districts.

There are a number of provisions in the bill that we strongly support.

One is the ability of municipal councils to prohibit demolition. The way it's drafted, it's fair, because there is the possibility of appeal to the OMB.

Secondly, there are maintenance standards. I mean, there's been a problem in the past where you can have a property designated and owners can simply get around designation by allowing properties to deteriorate, so it really defeats the purpose of the legislation. It would be better if there were some kind of financial incentives to maintain buildings. Maybe that's something that can be dealt with.

Thirdly, there are provisions that strengthen heritage conservation districts, not only the plans but also the process. There's interim control during the study period, and there are specific provisions dealing with the plans and making sure that there's proper public consultation and information to the public. These are all good measures.

Next, for the first time there's authority to set up a register of properties, not only designated properties but also properties that are of interest. Many municipalities have had inventories, but it's never been officially recognized before. Even now, there's not much legal clout in having that inventory, but it's a useful planning tool.

0940

Also, there's the power of the minister to designate, which hasn't been there before, so there's a possibility for the province to protect properties.

There are also measures to allow for amendment to designating bylaws. A lot of the bylaws in place now were not particularly well drafted, are not clear. Now there's a mechanism to amend those bylaws in a way that's not too bureaucratic and cumbersome.

Lastly, there's a provision whereby the minister can issue a stop order to stop either alteration or demolition of a property that's of provincial interest.

Mr Bob Saunders: While we support the bill very strongly and would like the Legislature to move as quickly as possible to adopt it, and possibly then the ministry should commit itself to a further period of consultation for further amendments to the legislation, we do have one very serious reservation, and I think it's a reservation that you're going to hear about from a number of municipalities. That is that the proposed section 13 of the bill allows the minister to remove from municipal purview properties owned by the crown or properties owned by a prescribed public body.

I appreciate the reason for doing that; I can quite imagine the kerfuffle that would arise if a municipality issued a maintenance order to a provincially owned building. Nevertheless, we are concerned because, to be honest, the province has not been a particularly good steward of its heritage properties in the past. I need only take you into ORC properties in the northeast corner of Scarborough, for example, mid-19th-century farmhouses owned by the ORC in the Rouge park that are slowly crumbling simply because the ORC will not put any money into them. Yet I can think of two of those houses that are of sufficient architectural interest that they've been the venue for several movie shoots, one of them very famous, right on Steeles Avenue East on the south side, a green and white place that has appeared in several of the Green Gables series. I think of Fort Henry, for

example, where regular maintenance was not done over the years, in part because of a jurisdictional problem. The result of its lack of maintenance over the years is that the province is now on the hook for a multi-million dollar renovation and restoration job at Fort Henry because it wasn't maintained.

We would suggest that what is needed here, particularly because this term "prescribed public body" is a pretty open term, is a little transparency about what are prescribed public bodies. We would suggest, therefore, that rather than leaving it as a listing to be made by the minister, a listing of such prescribed public bodies be appended as a schedule to this act.

Mr King: There are some provisions in the bill which could be strengthened. It's good that the members of the Conservation Review Board can be on the OMB for some hearings. We suggest that where there are heritage issues it should probably be mandatory.

Secondly, we believe that any citizen of a municipality, any person, in addition to having the right to appeal a decision by the council to de-designate a property, should also have the right to appeal a municipal decision permitting demolition of a designated property to the OMB. In Bill 60, under subsection 34.1(1), only the owner of the property has the right to appeal to the OMB if an application is refused or is subject to unpalatable conditions. Sections 26.1 and 28 of Bill 60 exempt provincially owned properties—that's part III.1—that might happen to be within a municipally created heritage conservation district from the applicable guidelines within the district, but we believe that all properties within a heritage conservation district should be subject to the plan. This could be dealt with under the current legislation if the minister's guidelines parallel what's being done under the conservation district.

Next, section 15 of Bill 60 requires that the municipal council consult with the municipal heritage committee prior to adding a non-designated property to the municipal heritage register. However, the council is not required to inform the municipal heritage committee prior to demolition of a building on a listed, but not designated, property on the register. This should be amended to provide that, before the granting of a building permit or a demolition permit for a property listed on the inventory, the heritage committee should be consulted. That would be an easy amendment to the legislation.

Lastly, section 21 permits a municipal heritage council to delegate to a municipal official or employee the authority to approve alterations. This should be amended to allow a council, if it chooses, to delegate the authority to the municipal heritage committee. In many jurisdictions, that's what happens informally already.

Mr Saunders: There are a couple of further amendments we suggest might be introduced to the bill. You're probably aware that many municipalities now regard the cost of advertising for giving notice of designation to be burdensome, to the point where they now hesitate to move on designations of properties simply because the cost of

advertising is too great. Every municipality, like every level of government, is feeling the pinch financially.

For example, besides being a member of Community Heritage Ontario, I happen to be the vice-chair of the Toronto Preservation Board, and I know that in Toronto, for us to advertise for a designation costs in the area of \$8,000 to \$9,000, even for a little tiny ad. That's a very heavy cost for such a thing.

We think that maybe you should look at the Planning Act as the model for this. The Planning Act, under the regulations allowing for minor variances in planning, simply allows the municipality to put a sign up on the property and to make sure that all the property owners in the immediate area of the property subject to application are notified of this application and of its implications. We think this would be, frankly, a much more effective notice of intent to designate than the present little miniature ad that appears in the dailies, which most people probably simply skip over and don't even notice. Look at the Planning Act and the provisions in the regulations for dealing with minor variances, and that should be the key to handling notice for intent to designate for municipalities.

Second—and whether you want to convert this into a mini-omnibus bill is a question—I think you should think in terms of amending the Planning Act to ensure the decisions of the minister, municipal councils, planning boards and the OMB be consistent with the heritage standards and guidelines issued by the minister. There is that intent already with the provincial planning policy statement under the Planning Act, and I think the same thing should be happening in relation to the Ontario Heritage Act.

Finally, we think that every municipality in this province should have a heritage committee. Every municipality in this province which has an official plan is expected to have, as part of that official plan, provision for the protection and preservation of the heritage properties within it. Now, how does a municipality have the expertise and the knowledge to do this? We think that every municipality should be required to have a heritage committee. It's not a burdensome cost. Committees are very cheap to run; in fact, many of them don't even have budgets. In any case, the municipality could even designate a local historical society or could constitute itself as a heritage committee. But we really feel that this should be a requirement under the act.

0950

I have to come back to one other theme that Paul mentioned in speaking about the guidelines that the minister will prepare in connection with the preservation of its own buildings. We feel very strongly that the heritage community at large should be involved with this. If the ministry is going to go ahead, for example, to deal with buildings, as Paul mentioned, in heritage conservation districts which are owned by the province, we would like the province to try very consciously to mesh its own guidelines with what is common practice, best practice in municipalities.

Finally, I can only reiterate what has been said a couple of times already this morning, that it is not enough to introduce some sticks into the legislation to protect our heritage; there are going to have to be some carrots. While there is a property tax relief program in operation at present—and the province, to give the province credit, shares in that property tax relief through the education taxes—nevertheless, there have to be some further carrots in place, because the property tax relief program is being implemented in many municipalities not so much to assist heritage property owners as for other kinds of planning goals related perhaps to downtown redevelopment, brownfield redevelopment, this kind of thing, and we feel very strongly that there's got to be some further assistance to heritage property owners.

The Chair: You've used all of the time for your presentation. There won't be time for questions.

Mr Saunders: If any of the members of the committee would like to contact us informally to ask any questions, we'd be very happy to talk to them.

The Chair: Thank you.

I'd like to call the Old Durham Road Pioneer Cemetery Committee forward, please. They're not here?

Interjection.

The Chair: With the permission of the committee, perhaps we'll move to the next presenter, the Urban Development Institute.

Mr Michael Stewart: Good morning. Actually, I'm a little bit at a loss, because my colleague Neil Rodgers is also not here yet. I apologize.

Mr Marchese: Let's try the next one.

The Chair: Ontario Catholic School Trustees' Association? Ontario Heritage Foundation?

BROUGHAM PIONEER CHRISTIAN CEMETERY BOARD

The Chair: Is Anna Clapp here? Are you prepared to present at this time? Please come forward.

Good morning. You have 15 minutes for your presentation. If you leave time, we'll have an opportunity for questions, but you may take all of the time for your presentation.

Ms Anna Clapp: Mr Chairman, members of the committee, members of the Legislature, ladies and gentlemen, I am Anna Clapp, and I am here as a citizen of this province and on behalf of a cemetery board, specifically the Brougham Pioneer Christian Cemetery Board. This is a not-for-profit cemetery of approximately two acres in the village of Brougham, north of Pickering Village, south of Uxbridge and east of Markham.

I value this opportunity to speak to you concerning Bill 60. I and the board I represent are among those who are very disturbed that Bill 60 makes no reference to our cemeteries and historic burial sites, leaving them without protection as heritage sites.

The cemetery I represent as a trustee has been in existence for over 160 years. Its beginnings as a family burial site on a farm expanded, as did many others, to

provide a place of interment for the deceased of neighbours and the surrounding community as it developed. Once again, as was often the case, within a few years the parcel of land was extended and donated for the erection of a house of worship. The community members in this case identified themselves with the "Christian" denomination, more broadly part of the congregational denomination. I mention this to explain that term in the cemetery name. With the major changes in the structure of Canadian religious denominations in the early part of the 20th century, in particular what was known as church union in 1925, a number of congregations merged and some buildings became redundant. This was probably the main reason the chapel, as it was termed, on this cemetery site was dismantled. However, the cemetery continued to serve any choosing to be buried there, and was expanded in about 1960 to the present approximate two acres.

For as long as we have records, the cemetery has operated on a not-for-profit basis, and its affairs have been administered by a volunteer board of trustees. Annually for almost 100 years, there has been a decoration or memorial day service, as is and has been the long-time practice in many parts of this country and others. I see this cemetery as not unlike many others in this province. The ones which I have a personal acquaintance with and interest in include Quaker Hill, near Uxbridge; Goodwood, in Goodwood Village; Whitevale, in the Village of Whitevale; and Arkona, in the village of Arkona, Lambton county. We provide burial services at cost, and then, with volunteer labour or out of our own resources, we work to maintain and enhance the natural beauty of these sites. We trim the trees, we see that the grass is cut and often see that monuments worn with time are sympathetically restored in keeping with heritage conservation principles. This we see to be our privilege and our responsibility. We see ourselves as stewards.

As well as speaking for the Brougham board, I have a particular concern for the usually small historic burying places dotted throughout the province, many of which are no longer active in terms of receiving burials. It is my concern that many of them have no one, nobody, to speak for them. There are a number, most but not all in the Pickering-Uxbridge area, again that I visit with personal interest. These cemeteries are threatened by development. For example, the L'Amoreaux cemetery in particular: I know the descendants are very worried about the preservation of this cemetery. These places are probably like the places that Catharine Parr Traill was speaking of as she sailed into this province, Upper Canada then, for the first time. Writing home to her mother in England on August 29, 1832, she said, "Among other objects, my attention was attracted by the appearance of open burying grounds by the roadside. Pretty green mounds surrounded by groups of walnut and other handsome timber trees contain the graves of a family, or maybe some favoured friends slept quietly below the turf beside them. If the ground was not consecrated it was hallowed by the tears and prayers of parents and children. These household

graves became the more interesting to me on learning that when a farm is disposed of to a stranger, the right of burying their dead is generally stipulated for by the former possessor." That is in *The Backwoods of Canada*; I took it from the Prospero edition, page 48.

1000

My own concern for this type of cemetery is also shared by the Brougham board, which as part of its governing document, under "Objects of the Cemetery Board," item e, commits itself to "undertake projects to encourage appreciation of pioneer cemeteries and communities."

The Ontario Genealogical Society, known for the tremendous amount of work it has done in recording tombstone inscriptions throughout the province, knowing my interest in cemeteries, approached me some years ago, asking me if I might serve as the cemetery transcription chairperson within their library division. This involves the maintenance of their provincial collection of cemetery transcriptions and liaison with the staff of the Canadiana department at the North York Central Library, who provide the public service for this deposit collection housed there. Working with this collection, which staff have repeatedly told me is their most heavily used resource in the Canadiana department, has given me, I believe, an overview and awareness of the thousands of burial sites documented in this province not shared by many others.

My work with this collection reinforces my conviction that cemeteries, particularly historic, inactive cemeteries, as cultural heritage sites, need clear legislated protection. This has been alarmingly brought home to us in the last few years, in three cases in particular. I refer to two hearings before the Commercial Registration Appeal Tribunal—the Clendennen cemetery hearing and the Palgrave cemetery hearing—and to the proposed disinterment of bodies at St James Cathedral in this city to make way for a condominium development.

I followed proceedings in these hearings, attending personally many days, and followed the controversy over the cathedral burying ground. In the end, most of us came away having learned that there is no protection for cemeteries in situ. In the first of these cases, the appeal hearing on the Clendennen cemetery, it was believed by those interested in heritage matters that the outcome was precedent-setting—a landmark decision. Disturbingly, this did not prove to be so. Heritage groups, at great expense that they can ill afford, had to argue the same matter again in the case of the Palgrave cemetery: that closing and moving cemeteries from their original location is not in the public interest.

Much of my professional working experience has been in the information field. I know the importance of primary sources in any type of research or writing. The cemetery is a primary source unlike any other. As another has said, "A burial site or cemetery represents an equivalent body of information that can be accessed, analyzed and understood, just as a library of books." I

would strengthen this statement to read “just as a library of manuscripts.”

If inactive cemeteries are not preserved in their original sites, I see it as a great indignity to human bodies and the obliteration of our heritage. Buildings and other structures may reflect our heritage. Cemeteries are who we are, our DNA resting where we have dwelt.

The Chair: Thank you very much for your presentation. We have just a couple of minutes left. We'll start with the government caucus if they have any questions at this time.

Mr Delaney: Just a very short question: You make a very interesting point on the preservation of cemeteries. Certainly anyone who has visited Europe especially knows that if what you really want to do is see history up close and personal, one of the best ways to feel it and see it to visit a cemetery.

Cemeteries are often seen as movable in development plans, a point that you've commented on very eloquently. In western Mississauga we have one Catholic cemetery in some danger because the church congregation is small and its ability to preserve and maintain the adjacent cemetery is in question.

What I'd like to ask your opinion on is this: What might you suggest if a church that is adjacent to a cemetery property is sold or especially if it changes denominations, or the church building itself, adjacent to a cemetery, is redeveloped? What might you suggest in that context?

Ms Clapp: Perhaps that they seek designation right away, although that is not ironclad and can be revoked. I would hope that there would be enough people speaking for a cemetery such as that, where there is a congregation, to organize and do something about it. It doesn't take a lot of people.

Mrs Munro: I think you were here earlier when I made reference to the issue of cemeteries, so I'm really pleased that you're here to be able to give us further insight. I have to say, as a family member who goes to decoration every year, I understand the importance of those community cemeteries and how important they are to the descendants, quite frankly.

In earlier public hearings, there was the comment made that cemeteries were part of built heritage and therefore were protected because they were seen in that definition. Could you just, and I know we have very little time, give me a sense and the committee a sense of how fragile that definition is for you, obviously in the kinds of situations that you've pointed out here with these hearings where the cemetery was obviously very much in question?

Ms Clapp: If I'm not exactly understanding your question, just catch me and tell me. So you're talking about the fragility of—

Mrs Munro: Well, the argument that has been put forward is that cemeteries are covered under a definition of built heritage. Clearly, your experience would suggest that that isn't strong enough.

Ms Clapp: Right. There's certainly no mention of cemeteries that I see. When I look at the wording under that part of the act, I'm not sure that—for example, there are some cemeteries that have no markers; probably not a lot, but I don't see that they would fall in there at all. The word “structures” is used in that clause, and I've been wondering, do tombstones count as structures? I kind of hope so, because that would perhaps include many cemeteries. But for those that don't have stones standing, and I speak from experience, a stone can be on the ground and gone underneath in 20 years, so you either don't know it's there or, if somebody's digging for some reason, they find it's there, and perhaps others too.

The Chair: Thank you very much.

Old Durham Road Pioneer Cemetery Committee, are you present? Not yet.

Urban Development Institute of Ontario?

Mr Stewart: I apologize to the members of the committee; I'm advised that Mr Rodgers is stuck in traffic and should be here momentarily.

The Chair: OK, thank you.

1010

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

The Chair: Good morning and welcome. You have 15 minutes for your presentation. Should you choose to leave any time in your presentation, there will be an opportunity for questions, but you may use all of the time for your presentation if you choose so. Please proceed.

Mr Bernard Murray: Good morning. I am Bernard Murray, vice-president of the Ontario Catholic School Trustees' Association, and with me is Carol Devine, who is the director of political and legislative affairs with the Ontario Catholic School Trustees' Association. We wish to thank you for the opportunity to make a presentation here on Bill 60 this morning.

The Ontario Catholic School Trustees' Association has dedicated itself for the past 70 years to the promotion and development of the Catholic school system in Ontario. Our membership comprises 29 Catholic district school boards and five Catholic school authorities that collectively educate approximately 600,000 students and represent millions of supporters of the Catholic school system in Ontario. A majority of the activity of OCSTA is to represent the point of view, aspirations and needs of Catholic school boards and school authorities to the provincial government.

It is for this reason that OCSTA is compelled to offer the government its views on Bill 60. A number of OCSTA's school boards own buildings of considerable age that might well be considered heritage sites. In general terms, OCSTA and its member school boards support the policy of ensuring that a careful process be followed to consider whether a heritage site should be designated. We share the province's desire to ensure that every possible avenue be explored for the maintenance of heritage sites.

OCSTA supports parts of Bill 60, including the change to the Ontario Heritage Foundation. The new trust will hopefully provide resources to enable owners of heritage properties to maintain and improve those properties where they are still useful. We particularly support the enactment of regulations to prescribe criteria for determining whether a property is of cultural heritage value or interest, subject, needless to say, to further review of proposed regulations.

There will be times, however, when our member school boards cannot continue to own and maintain certain schools. As the Honourable Gerard Kennedy, the Minister of Education, knows and has stated, there are a number of problems with the school capital funding model. The benchmarks for construction in the jurisdictions of some school boards are too low, and consequently there is considerable shortfall between the school board's expenditures on new capital facilities and the revenue that it obtains from provincial grants. Many school boards have been looking to dispose of surplus schools at fair market value in order to make up the shortfall. Designation would have the effect of removing development potential from a property, thereby reducing or eliminating its market value. If surplus schools are designated under the Ontario Heritage Act and Bill 60 is passed in its current state, school boards and school authorities will be unable to dispose of surplus schools at fair market value and will find themselves in grave financial difficulty.

There is no doubt that Bill 60 would inequitably burden certain organizations far more than others. Our member school boards have indicated to OCSTA that they own a significant number of buildings in Ontario that are likely to be designated under the act. This is not surprising, since schools are often old and prominent buildings in the communities across Ontario.

We were especially disturbed to learn that while heritage groups and municipalities were extensively consulted in the development of Bill 60, property owners who might be affected by the changes in the legislation, such as school boards, were not. The consultative process did not seek the input of OCSTA or, to the best of our knowledge, the Ontario Public School Boards Association, even though school boards are owners of significant heritage properties in Ontario. As a result, the bill gives heavy-handed power to municipalities, and leaves property owners with little in the way of protection. OCSTA believes that a more balanced approach to the needs of property owners and the needs of heritage preservation can be achieved, but only after an open consultation process involving all the interested stakeholders and an open-minded exploration of other approaches to heritage preservation.

School boards and school authorities are public bodies that are dependent upon the provincial government for funding of their capital expenditures. This current school capital funding model is unable to adequately address the cost of maintaining heritage buildings. School boards and school authorities are simply not able to afford the con-

siderable expense that this heritage tax would impose on them.

It is important to recognize that payment of this additional expense will only come at the cost of other important services that school boards provide for their students and communities, and might affect the financial ability of school boards and school authorities to maintain their buildings.

It is also worth noting that other incentives, such as tax credits offered under 365.2 of the Municipal Act, are of no assistance to school boards or other public bodies.

People are often very attached to school buildings, even to buildings that have no obvious historical or architectural significance. School boards are aware that municipal councils are often highly susceptible to neighbourhood influences. This we know from our experiences in attempting to locate portables on school sites, which municipalities often resist at the behest of local community groups.

Our member boards fear that they will become embroiled in lengthy legal processes around buildings that are of dubious historical significance, only because it is politically easier for a municipality to designate a site or refuse to issue a demolition permit and refer the matter to the Conservation Review Board and the Ontario Municipal Board than it is to simply refuse the request of a local community group.

Ms Carol Devine: OCSTA is concerned because Bill 60 does not provide the OMB with any criteria to guide its decision-making. The authority given to the OMB by section 34.1 provides:

"(6) After holding a hearing, the board may order,

"(a) that the appeal be dismissed; or

"(b) that the municipality consent to the demolition or removal of a building or structure without terms and conditions or with such terms and conditions as the board may specify in the order."

The experience of school boards is that the prospect of an appeal to the OMB does impose some discipline on municipalities that might otherwise be tempted to exceed their powers under, for example, the Planning Act. The prospect of legitimate appeals forces municipalities to negotiate with landowners. Similar pressure needs to be inserted into Bill 60 to make this process fair to property owners.

We recommend that the following subsection be added:

"(6.1) Without limiting the generality of subsection 6(6)(b), where it appears to the board that,

"(a) the owner would suffer financial hardship as a result of a refusal to issue a demolition permit; or

"(b) the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural heritage value or interest in the municipality,

"the board may specify as a term or condition that,

"(c) the designating authority acquire the property for market value, or

“(d) the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the” same “owner.”

Other bodies making submissions to this standing committee have argued that the presence of a member of the Conservation Review Board on a panel of the OMB reviewing an appeal would create the perception of bias. We agree that this perception would be created and join in the recommendation that section 25.1 be withdrawn.

If it is to remain in the bill, then we recommend that the bill be clarified to ensure that a member of the Conservation Review Board is only one of the members of the OMB hearing an appeal. We’ve provided language to that effect.

Under section 34(7) of Bill 60, unless the building is in the course of demolition at the time that it receives royal assent, the new act will apply.

1020

OCSTA believes that retroactive legislation is unfair. We believe that if a property owner has, in good faith, complied with steps required by the Ontario Heritage Act in its current form, the process under the current act should be permitted to carry through to its final conclusion, so long as the demolition permit application was received before the bill receives royal assent. Again, we have provided language to effect that amendment.

Mr Murray: School board members of OCSTA are engaged daily in the preservation of heritage sites that are continuing to operate as schools throughout the province of Ontario. The commitment of school boards to heritage preservation is demonstrable.

At the same time, however, it must be possible for school boards to sell surplus school sites on the open market in order to be able to reinvest the proceeds of sale in preserving other school properties and in building new schools to serve their communities.

A more balanced approach to heritage preservation would be of assistance to school boards in Ontario. We believe that Bill 60 should be withdrawn and rethought. We believe that our proposed amendments to Bill 60 would provide some assistance in reaching a fair balance between the interests of property owners and the interests of heritage preservation.

The Ontario Catholic School Trustees’ Association regrets that Bill 60 was developed without a full and proper consultation process. Unfortunately, the haste in which groups affected by this proposed legislation were required to respond to it has severely limited the kind of creative thinking that can make a real contribution to public policy. We believe that there are solutions that can make a positive contribution to heritage preservation.

We’re grateful for this opportunity to address the standing committee on justice policy on the Ontario Heritage Amendment Act, 2004. Thank you.

The Chair: Thank you very much for your presentation. We just have time for one question, and the opportunity is for the NDP caucus.

Mr Howard Hampton (Kenora-Rainy River):

Thank you very much for your contribution. One of the issues which has been brought up on more than one occasion is that there is not a sufficient financial component. The cost of maintaining heritage buildings can be quite expensive. As it stands now, the costs would fall on to property owners or on to municipalities. We know municipalities don’t have the money. They are continuing to suffer from the burdens of downloading. We know, in your case, that school boards don’t have the money either.

While I hear your plea that the act be withdrawn and thought about some more, do you have in mind a specific financial concept? I take your comment that tax credits will not do school boards any good. Do you have some other ideas you can offer us? I think that without a financial component there is a huge hole in this proposed legislation.

Ms Devine: Actually, at the moment our answer needs to be no. Unfortunately, because of the timelines we have had to consider this, we have not really had the opportunity to think that through. We have identified the problem, but we would be more than happy to have the opportunity to sit down with a group of other interested citizens and talk about what the solutions might be.

We do support the preservation of heritage buildings. We just know the limitations on our own school boards to maintain our own buildings at this time. We look forward to the opportunity to be able to speak further about that and look for solutions, including financial solutions.

Mr Hampton: I would think that in growth areas—let’s say the Golden Horseshoe around Toronto—there might be some opportunities for trade-offs. In other words, you’d sell a building that doesn’t have heritage value on a market basis and get a lot of money, so you might be able to work some trade-offs. But in parts of Ontario that are not growing—once you get outside the Golden Horseshoe and into eastern Ontario, central Ontario and northern Ontario—not being able to engage in those kinds of trade-offs or cross-subsidizations would create real hardships for school boards, I would think.

Ms Devine: It would certainly be a more difficult situation. The suggestion, for example, around the transfer of density is one idea that would help in particular sites, if it were open to school boards and those owning property to be able to engage in that kind of work with developers. But in rural areas, it’s true, the potential is far less, so obviously outside help would be required in those cases.

The Chair: That is all the time we have for questions. Thank you very much for your presentation.

I need to move back up the list. Old Durham Road Pioneer Cemetery Committee: Are they here? No.

URBAN DEVELOPMENT
INSTITUTE/ONTARIO

The Chair: Urban Development Institute/Ontario? Good morning. Welcome.

Mr Neil Rodgers: Good morning, Mr Chairman, and thank you for the indulgence of the committee. A combination of traffic and protestations made it a little hard.

The Chair: Just before you get going, I'd ask you to read your name into the microphone for the purposes of Hansard. You have 15 minutes for your presentation. Should you wish to leave any time in that presentation, there will be an opportunity for questions. Thank you.

Mr Rodgers: Good morning, Mr Chairman and members of the committee. My name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario. We are pleased to have this opportunity to present our views on Bill 60.

Joining me is Mr Michael Stewart, of the law firm of Goodmans. He has been offering both technical and legal advice to our association with respect to this bill. He may be asked questions of a technical nature, if I cannot handle them.

Many of you know who UDI is. We are the voice of the land development industry in the province, and we have been that for over 40 years. We have 300 members. We are actively involved in all facets of public policy research and advocacy, working with both private and public sector stakeholders across the province. We serve as a forum of knowledge and research on land use planning, urban affairs, land development and housing-related issues.

Our members collectively are a force guiding the creation and improvement of Ontario's built environment. We are committed to planning and designing the best possible communities for all Ontarians.

Our members also play a crucial role in the provincial economy and its sustainable growth. We are vital contributors to that economy. We account for over 10% of the provincial GDP, some \$50 billion, and we directly employ over 350,000 men and women.

Our industry expanded in 2003 at a rate of almost 9%, nearly twice the annual growth rate for the Ontario economy as a whole. This growth, in turn, allows the government to deliver quality health care, education and services for all Ontarians.

UDI believes that the foundation of the planning and development process in Ontario should be built upon the principles of fairness, transparency, accountability and certainty. These were the core values of the Liberal campaign commitments.

UDI recognizes the challenges presented by attempting to successfully balance the competing interests and priorities inherent in land use planning. We are concerned that Bill 60, as drafted, will upset that balance and lead to unintended consequences. UDI recognizes the government's intention to reform this process, but in our respectful submission, the proposed changes to the Ontario Heritage Act in Bill 60 will remove fairness, transparency, accountability and certainty from the process.

In fact, the principle of fairness and the ethics related to the Ontario Heritage Act were weighed by the Supreme Court of Canada in 1982. The court's opinion

basically states that the preservation of Ontario's heritage should—and I will amend for the record: the word “not” is a mistake; my apologies—be accomplished at the cost of the community at large and not at the cost of the individual property owner, certainly not in total disregard of the private property owner's rights. Unfortunately, Bill 60, in many respects, does not reflect this fair and balanced approach.

1030

Under the Heritage Act, municipal councils may designate buildings that they consider to be of historic or architectural value or interest. Once designated, a building may not be altered or demolished without the approval of the municipal council. However, if the owner wishes to demolish the building, council must then decide whether the municipality will acquire it—if necessary, by expropriation. UDI believes that the municipal power to delay the demolition of a designated heritage property for up to 270 days in the current act represents the right balance between the public interest and private property rights and should not be amended. In the current system, the municipal power to delay means that it is in a municipality's interest to negotiate with the property owners to effect the preservation of heritage properties, which encourages, and often results in, innovative solutions.

Under Bill 60, municipalities would acquire the power to prohibit the demolition of property designated by the municipality or the minister. UDI believes that the addition of this municipal power opens up the process to potential abuse, as it creates the opportunity for effective expropriation without compensation. UDI submits that the benefits realized by the community of the preservation of historic or heritage properties is a public good, and in the interests of fairness the cost for providing public goods should not be borne by individual landowners.

However, if the government does not intend to remove this provision from the bill, UDI recommends that the province develop and integrate innovative fiscal tools and policy approaches to realize its goals. We believe that the preservation of heritage properties is a government priority, a public desire, and the province ought to develop means and tools to appropriately compensate owners of designated heritage properties for providing community benefits.

To that end, we suggest that the government consider creating a province-wide fund to compensate affected landowners. In addition, UDI also recommends that the government devise a mechanism whereby owners of designated heritage properties would be permitted to sell their density or development rights to neighbouring property owners. If properly implemented, this instrument would have the additional advantage of promoting intensification and assisting municipalities in reaching their targets while saving scarce municipal resources for other priorities. We would encourage that this measure be considered as part of the next phase of Planning Act reform, and further that this section of the bill be held in abeyance.

ance until such time as a comprehensive approach is developed that will deliver public good within a fair and ethical framework.

Under Bill 60, the owner of a designated property who is refused an application to demolish a building would be allowed to appeal the refusal to the Ontario Municipal Board. After holding a hearing, the board would have the power to dismiss the appeal, allow demolition or allow demolition with terms. To address the concerns of owner compensation for providing public benefits, we believe the board requires additional powers to those included in Bill 60. UDI recommends that Bill 60 be amended to allow the board, after holding a hearing, to award compensation to a landowner whose lands have been effectively sterilized and refuse the demolition under the condition that the municipality will acquire the property within a specified period of time, failing which, the municipal would consent to the demolition. These additional powers, in our opinion, do ensure fairness in the process.

Bill 60 would allow municipalities to prescribe minimum standards for the maintenance and repair of the heritage attributes of properties designated by the municipality or the minister. UDI understands that the intent of this clause is to provide municipalities with the tools to prevent demolitions by neglect. The wording of this section is confusing and sufficiently vague as to make unclear what standards would apply and if the municipality would have the power to impose significantly higher standards than those applicable to other types of properties. We are concerned that some municipalities would attempt to use this newly acquired power in order to secure the actual restoration of such properties by forcing owners to engage in costly refurbishment of the heritage elements of their designated properties.

There currently exists a framework to effect restoration of heritage properties. At present, if municipalities want to see extensive restoration work undertaken, they have the tools to encourage it. Municipalities can either help finance the work directly or, if the owner is proposing to redevelop the property, the municipality can agree to higher densities than are otherwise permitted in exchange for public benefits of the restoration of the heritage property. UDI acknowledges that there is a fine line between maintenance and restoration but believes that this section must be amended to close the potential back door that exists for municipalities to force restoration to be paid for by private monies.

UDI believes that the current Ontario Heritage Act works reasonably well to accomplish its goals. The rules are clear and unambiguous, and the interests of municipalities and property owners are relatively well balanced. We believe there are several potential unintended consequences that may arise if Bill 60, as drafted, is passed, including investment in redevelopment opportunities decreasing due to the uncertainty of the process, potentially affecting the ability of municipalities to reach their growth and intensification targets; municipalities becoming the owner of properties where the value of restoration

exceeds the value of the land; and scarce municipal resources spent on unnecessary Ontario Municipal Board appeals.

A consistent theme evidenced in legislation coming forward from this government has been the notion of retroactivity of landowner rights and approvals that have legitimately been vested by municipalities or other decision-making bodies. Subsection 34(7) of the bill states that unless the building is in the course of demolition at the time it receives royal assent, the new act will effectively take force and effect. I remind the committee and the government that UDI argued the notion of the point of retroactivity during the Bill 26 hearings, recently concluded. The government recognized that the bill, as drafted, was patently unfair with respect to this item and has dealt with the effective date of the bill in a manner that has been consistently applied across the province of Ontario in past legislation.

In summation, we submit that the bill, in its current form, risks simply bogging down planning in an even more protracted process, squandering scarce resources and threatening private sector investment. We are committed to the principles of fairness, accountability, transparency and certainty, and we hope that the government supports these principles also.

Thank you for your time. We'd be prepared to take questions.

The Chair: Thank you very much. We have just a couple of minutes for the government caucus.

Mr Michael A. Brown (Algoma-Manitoulin): Thank you for bringing us a rather comprehensive brief. In the second paragraph on page 5 of your brief, where you are discussing compensation, you suggest "that the government consider creating a province-wide fund to compensate affected landowners." I was wondering if your organization has some thoughts about how you would create a province-wide fund for compensation—where the dollars for that might come from. Are you suggesting there is something in a sort of broad property opportunity for government to raise those dollars? What exactly do you mean by that?

Mr Rodgers: I think we're all aware of the fiscal pressures on all levels of government. This is no different than proposals we've made in the past, whether it be on the issue of brownfields legislation, where we believe there's a public good. I think it comes down to the question of what the public expects of their government. Where do they want their priorities to be focused?

I'm not suggesting that this is more important than some of the other agendas that are in front of the government—health care and education—but I think the government has to make the decision as to how best to establish this fund. I think there are more creative measures, Mr Brown, which are presented in our brief that don't necessarily speak to the province putting up a fund. It is one of many ideas. We are simply putting in front of you a menu of choices.

The Chair: That's all the time we have for questions. Thank you for your presentation.

Mr Rodgers: Mr Chair, I will provide a revision to that point.

The Chair: That's not a problem. Thank you.

1040

ONTARIO HERITAGE FOUNDATION

The Chair: The Ontario Heritage Foundation.

Hon Lincoln M. Alexander: Good morning, Mr Chairman and members of the committee.

The Chair: Good morning and welcome. You have 15 minutes for your presentation. Should you leave any time, there will be an opportunity for questions. Please proceed.

Hon Mr Alexander: Thank you very much, sir.

Mr Chairman and members of the committee, it is a pleasure to be here today and see so many familiar faces, and to support this legislation. As chairman of the board of the Ontario Heritage Foundation, I appreciate the opportunity to speak with you about Bill 60.

I have with me today Richard Moorehouse, who is the foundation's executive director. Richard and I will be able to answer any questions you may have—I may not be able to, but he'd better.

Those of you who know me know that I believe strongly in community, in family and in tradition. For those reasons, I was pleased to join the board of the Ontario Heritage Foundation and, when offered by the Premier to become chairman of the board, I was humbled.

As you all know, the foundation is the province's lead heritage agency. It has a broad mandate to protect Ontario's heritage. It looks forward to swift passage of the bill and is committed to working with government, opposition parties and the community to ensure its effective implementation.

We receive our mandate under part II of the Ontario Heritage Act. It is a trust that's been given to us, as far as I'm concerned, and it should not be violated. We are there to protect and conserve. We advise the Minister of Culture on the conservation, protection and preservation of the heritage of Ontario.

I would like to congratulate the minister and the government on the introduction of Bill 60 and, as well, all parties for their work in support of heritage. We have recently been heartened by a groundswell of public support for heritage preservation.

I note it has been over 30 years since this act has been significantly amended.

Many of you are familiar with one of our newest programs: Doors Open. The program was launched in 2002 and has been tremendously successful, with nearly 1.2 million visits to community heritage celebrations. I can't imagine an Ontario that would not want to preserve buildings and natural landscapes.

You have my written brief, I think, on Bill 60, so I will only discuss a few highlights, but I know you have read the details.

Let me begin with municipal demolition control. It is a critical part of the legislative package. Municipalities must be given the tools to deny a demolition permit to protect a heritage property. Some recent lamentable examples where municipal demolition control could have made a difference are:

The historic Capitol Theatre in Cornwall was demolished in 1991 after the municipality repealed the designation;

The Salmoni building in Amherstburg, which was designated and protected by a municipal easement, was torn down last month;

The Bronte church in Oakville, a 19th century black congregation church with ties to the Underground Railroad, was demolished approximately five years ago;

Between 1985 and 2001, Kitchener-Waterloo lost 16 heritage properties to development; and

In Vaughn, 15 heritage properties listed by the municipality have been demolished in 2004.

The Ontario Heritage Foundation board has stated in the strongest terms that for the act to be successful in protecting our heritage, it must provide tight restrictions on demolition. We support the amendments proposed that are giving municipal and provincial power to prevent demolition of heritage sites.

We also support provincial designation and demolition control. The province must also have the authority to prevent demolition. We support legislation that gives the province authority to designate and to prevent demolition once a property has been designated.

The foundation has a strong role to play in this regard. As I said, we are the lead agency. We protect provincially significant buildings, cultural landscapes and natural heritage properties on behalf of the crown through ownership with heritage conservation easements. We work with partners and communities all over Ontario to accomplish this.

Provincial designation will provide another effective tool for protection.

Bill 60 proposes standards and guidelines for the protection of a heritage property owned by the province. This is a necessary provision.

Bill 60 provides improvements to the tools available to municipalities to protect heritage districts. More than 70 heritage conservation districts have been created in Ontario to protect more than 11,000 significant heritage properties in their context. This is a truly effective way to protect streetscapes and neighbourhoods.

There is a need to better align heritage conservation district plans with a municipality's general planning processes—no doubt about that. Heritage conservation districts have a significant role in building and maintaining communities. The Ontario Heritage Foundation supports this requirement for a district plan and guidelines for managing change to the district.

We also support the use of interim control bylaws for areas identified for study as heritage conservation districts. This is consistent with the interim control bylaw powers available under the Planning Act.

In conclusion, let me add that the foundation is strongly supportive of the provisions outlined in Bill 60, and we congratulate the government on its work. This bill will make a significant difference in our ability to protect heritage resources in Ontario. The Ontario Heritage Foundation is very excited about the new rules highlighted for it in the act, and we look forward to working with the government as it puts this proposed bill into action.

Thank you, Mr Chairman, ladies and gentlemen. We are open for questions.

The Chair: Thank you very much for your presentation this morning. We'll start with the NDP caucus. Mr Hampton, if you have any questions, go ahead.

Mr Hampton: I'd like to ask you three questions. These have been brought up by other organizations that have appeared before the committee. First, there are a number of organizations that have come forward and said that the bill, in its present form, would provide no protection for cemeteries. We have some very old and historic cemeteries in Ontario, particularly in rural, southern Ontario. They're asking for an amendment so that these cemeteries, which I think have great genealogical and historical value, are protected. I'd like to know your views on that.

Hon Mr Alexander: I think, Mr Hampton, that once you introduce legislation, in my experience and I know your experience, it's never perfect. That's why you have first reading, second reading, committee. It's at that time you get the views of those who are adversely affected. It's at that time that you, as members of the committee, will have the opportunity to accept that as an amendment. I don't expect that this bill is perfect. It's not perfect. I don't know any perfect legislation. So in terms of protecting cemeteries, as I related to one just a while ago, they ripped that apart. That's not good business. I think the committee would be wise to look at that particular need for an amendment very carefully.

Mr Hampton: Just a few moments before your presentation, the association of Catholic school trustees presented and pointed out that one of the problems for them is that they believe they have a number of older schools that likely will be designated and that they believe should be designated.

1050

Hon Mr Alexander: Should be.

Mr Hampton: They would support that.

Hon Mr Alexander: So what do they want?

Mr Hampton: The problem they have is that the cost of maintaining a heritage building is often significant and they do not have in their funding formulas, as the funding formulas stand now, either the capital monies or the ongoing operating monies, in some cases, to adequately protect those heritage buildings. I put the question to them if they believed there needs to be some additional financial component to this bill.

I know from talking with municipalities that they feel they are already cash-strapped. They have a whole long list of new responsibilities.

Hon Mr Alexander: So is the provincial government, as I understand it.

Mr Hampton: What I hear municipalities, private landlords and school boards saying is that, if this is to be done properly, there needs to be some kind of financial component to this; otherwise, there's a big hole. I wanted your views on that.

Hon Mr Alexander: I knew you were going to ask a question like that, Howard, because you're so sharp.

All I can say is that I think we're all faced with the same problem: We all need more money. Whether we're going to get the money and how we're going to get it is another problem, but I do think the committee will have to determine what kind of money we've got and how it can be spread around in order to bring about equality and justice. All legislation is steeped in the need for money. I can't deny that.

Mr Hampton: I know that heritage organizations across Canada have thought about this. Whether you're in Saskatchewan, Manitoba, Ontario or Quebec, heritage organizations have spent some time thinking about this issue. Do you have any suggestions as to concepts, structures—I would agree with you that these are public goods. This is very important for Ontario going forward, so I think there has to be a strategy whereby we share in this important undertaking.

Hon Mr Alexander: One thing about a good chairman is, he knows when he's in trouble. So I now pass this over to Richard Moorehouse, who is the expert, and he'll tell you what's going on.

Mr Richard Moorehouse: With respect to financial incentives, maybe I could explain to the committee the role that the Ontario Heritage Foundation has had in the past in this situation. The foundation, acting as a trust, has had provided to it, from the government, challenge fund money. As such, we received, in this case, \$5 million from the provincial government and then worked with communities to have them match that money to be able to have \$10 million to do conservation work across the province. That was seen as a very effective tool to help support communities in the many issues that you're hearing before the committee. It forces communities to raise funds as well and together, by matching, be able to do a lot more in the conservation of the heritage in the province.

The Chair: We have to move to the government caucus. Mr Racco.

Mr Racco: A simple question: Do you agree or disagree that the cost of maintaining heritage buildings is a community expense and not the owner's expense?

Hon Mr Alexander: I'll leave that one with you.

Mr Moorehouse: I would suggest to the committee that it is a shared expense. In working with community groups and individuals all across Ontario who are involved in the preservation of heritage buildings, what we found is that you need a committed owner, a willing owner, and you need support where it can come to provide necessary restoration dollars and support in the conservation.

Many times, too, it's just good education and good information to assist the property owner to make the right decisions with respect to their properties. Many have donated funds or provided funds directly for the restoration of their buildings.

Mr Racco: Do you think those funds should come from the municipality, the province? Which area would you recommend?

Mr Moorehouse: The most effective way is to come from many sources so that more and more people are committed to the preservation, be it from an individual, from governments or from other sources.

The Chair: Ms Mossop, a quick question? We're just about out of time here.

Ms Mossop: First of all, I just want to thank both of you very much for coming today. It's always a pleasure to see you—

Hon Mr Alexander: Would you speak a little louder? I'm old and I can't hear.

Ms Mossop: It's always a pleasure to see you, Mr Alexander, once again.

Hon Mr Alexander: It's very nice to be in this atmosphere, because I remember you have those who attack and those who want—

Ms Mossop: I promise I won't attack you.

Hon Mr Alexander: Oh, you can.

Ms Mossop: I just wanted to ask you, there have been some concerns raised today with regard to the financial component that might support this. We all know that money is tight, as you pointed out so directly. From the ministry staff I've worked with, I certainly get a sense that there are ideas, plans, ways that we could try to be supportive of people and come up with that. Do you see any reason why we should hold up this legislation because it does not have any specifics around funding at the moment?

Hon Mr Alexander: No, because you have to face reality. If this act hasn't been amended for 30 years, it is now due time. What the committee has to do is sit down in their deliberations to find out how you can meet the discrepancies that have been pointed out, the need that has been pointed out, how best we can act together in partnership to bring about the desired result. The desired result is not necessarily for the municipality, the churches or cemeteries but for the people of Ontario as a whole. So it's a shared responsibility.

The Chair: Thank you, Mr Alexander. That's all the time we have.

Hon Mr Alexander: Oh, give her one more, Chair. Let's be generous.

The Chair: Make it quick.

Ms Mossop: Do you think that the public good is only the responsibility of governments?

Hon Mr Alexander: I didn't hear the question.

Ms Mossop: Do you think the public good is only the responsibility of governments?

Hon Mr Alexander: Oh, heavens, no. No, no. We can't ask the government to do everything for us. The community must get involved. The individual has to get

involved. That's the problem with this country. They think governments can do anything. I say that governments should lead, but they lead in consultation with those who are affected. It's not just government. I would never say that, I've never said it, and it's not true anyway. That's why we're in a mess now, because government has been doing everything for everybody. Now it's time to bite the bullet, but don't bite my bullet too hard.

The Chair: Thank you, Mr Alexander, for your presentation.

Hon Mr Alexander: Thank you, Mr Chairman.

OLD DURHAM ROAD PIONEER CEMETERY COMMITTEE

The Chair: The Old Durham Road Pioneer Cemetery Committee. They've made it; that's great.

Ms Carolynn Wilson: I'm just not sure if I sit or if I stand.

The Chair: Have a seat, please.

Ms Wilson: Thank you.

The Chair: Good morning and welcome. You have 15 minutes for your presentation. Should you leave any time remaining, there will be an opportunity for questions. Go ahead.

Ms Wilson: Good morning, Mr Chairman and members of the standing committee on justice policy. My name is Carolynn Wilson and, along with my uncle, Howard Sheffield, and black descendants from Collingwood, I wish to address the standing committee on justice policy pertaining to Bill 60, An Act to amend the Heritage Act.

We are of the understanding that inactive cemeteries will not be protected under this new proposal.

I am president of the Old Durham Road Pioneer Cemetery Committee, an affiliate of the Ontario Historical Society. In 1990, concerned citizens recovered four broken tombstones from this black cemetery which had been ploughed under for a potato field. We still believe that there are dislocated graves and missing headstones. Without interest, concern and protection, cemeteries such as this would be obliterated and the history of not only the people but the area would be lost.

This is evident at Negro Creek Road in Holland Centre in Grey county: another black settlement which has lost its cemetery due to being physically dug up and moved to an undisclosed area. Again, lack of protection and public awareness were key factors in the removal of such a vital part of history in the Grey county area. The names of those early black pioneers were lost. At Negro Creek Road, if it were not for the interest and concern of the local white residents and the black descendants, the name Negro Creek Road would also have been erased due to its political incorrectness.

1100

We are at a focal point in Canada's history where we are recognizing and honouring our war veterans for the sacrifices they have given to ensure we live in a free country. It is also vital at this point in time that we recog-

nize and perpetuate the honour of our forefathers and pioneers of all our diverse cultures who gave us this country which we can call our own. What better way to thank them than by honouring their memory and protecting their resting place? Simply because they are dead and buried does not make them of lesser importance than a living person, because they too have rights.

On behalf of not only black cemeteries, but in the interest of all cemeteries across Canada, historical sites, museums and institutions that promote the history of Canada's peoples, I would ask that the standing committee on justice policy recommend to the Legislative Assembly of Ontario that all cemeteries, active and inactive, be preserved, protected and maintained in their original historic site.

Humbly submitted. Thank you very much.

The Chair: Thank you very much for your presentation. We'll go to the Conservative caucus.

Mrs Munro: Thank you very much for your presentation. We certainly are very sympathetic to the value, not only in an emotional way in terms of our forefathers, but also in recognizing how important they are as historical records. I went with my late mother to a pioneer cemetery and we dusted off tombstones and we were able then to put together a more complete sense of family history. So I certainly come to this with an understanding and a sympathy for the issue.

We've heard from the government that in the bill there is a definition that is built heritage, and that is assumed to include cemeteries. However, you and a number of other presenters have given a different perspective on how protected cemeteries are in our current legislation and in the proposed legislation. So we will be looking for some surety in amendments that make sure your issue is addressed.

Ms Wilson: Thank you.

Mr Hampton: I wanted to ask you the next question: I know from reading some of the other briefs that many of the older cemeteries are in fact maintained by volunteers.

Ms Wilson: Yes, they are, sir. They're maintained by volunteers. That's exactly how it is.

Mr Hampton: In your view, and I recognize you may or may not be an expert on this, is there a financial component to this in terms of looking after these cemeteries? I agree with you. I think it's important historical and genealogical information that otherwise may not exist anywhere else. Is there an aspect of this that needs some financial redress or is there some other way that these historical cemeteries can be looked after?

Ms Wilson: Let me just say it this way: Our volunteer committee looks after the Old Durham Road Pioneer Cemetery. We took on the responsibility. We weren't too sure if the municipality would carry the responsibility of that cemetery, so we took it upon ourselves, for over 20 years now, to maintain it and put money in and do a little fundraising. In that aspect, we gained the support of the public interest.

I'm certain that we can have, or other cemeteries I'm sure could have, extra support, but in our particular case, those black cemeteries, we didn't have confidence that municipalities would protect or care for our tombstones and our lands. So we took the stand and came forward on that.

Mr Hampton: And you've been able to do that?

Ms Wilson: We have. With some support and people coming in, we've just maintained it. We took responsibility for that black cemetery. We felt we didn't want to lose it again.

I'm not sure if I answered all that, sir. Perhaps other cemeteries do need support. I can say we probably could do a lot more, but we were just very cautious. That's why we're here today, saying that we feel the protection of cemeteries must be at a higher level.

The Chair: Thank you, Mr Hampton.

Mr Hampton: I want to confirm: It's your decided view that there must be firm language in the bill protecting our historic cemeteries?

Ms Wilson: Definitely, yes, there has to be, and understandable at a public level, that we can all understand that and agree.

The Chair: Government caucus, Ms Mossop.

Ms Mossop: Thank you very much for your input today. This is a question that I had initially as well and put to the staff of the ministry, and we've been working on this one. Actually, cemeteries are covered in the Heritage Act presently by real property. It is not specifically stated, just as other structures are not specifically stated, but it is real property, and about 140 cemeteries are designated right now throughout the province.

Bill 60 makes protection of our heritage-designated properties stronger, which would include stronger protection for cemeteries that are presently designated. We have a commitment now from our staff that we will be more specific in our communications about stating that cemeteries are specifically included in this act and in this bill.

Where we have run into a little bit of trouble, and we now have an undertaking from our minister to carry the ball on this, is that we come into conflict to a certain extent with the Cemeteries Act, which comes under another ministry, but we have an undertaking to work with the Ministry of Consumer and Business Services with regard to this. Also, our minister has undertaken to work with Minister Watson on this specific issue because it's one that we all feel very strongly about. So this is what we have been able to determine so far. Do you feel comforted by that?

Ms Wilson: I believe so, if I'm understanding correctly. I just know that we need accountability for our inactive cemeteries. From our own personal point of view, a lot of our stones are throughout the area and no one takes on that responsibility. Perhaps if you're saying they're included in this legislation at that higher level, then I comprehend that.

Mr Brown: I just want to thank you for coming this morning. I think it's incredibly important.

I come to this from a number of perspectives. I have a degree in history and have spent a fair amount of time in cemeteries, given the fact I'm a funeral director. I also represent a very rural constituency. It would make Grey county look like a positively urban area. I represent about 86,000 square kilometres.

I have actually had the experience myself as a funeral director of going with families out to the back of a family farm—we actually had to use a half-ton truck to get back to where we needed to be. So I know how important these cemeteries are to people and to the heritage of the province.

I just want to clarify that the Ministry of Consumer and Business Services is in the process of drafting regulations to some bereavement sector acts that were passed actually in the last Legislature. I know that our minister in this ministry is working very hard with the other ministry to resolve this.

I would tell you that I appreciate you being here and raising these issues.

Ms Wilson: I certainly appreciate your response.

The Chair: That's all the time we have for questions. Thank you for your presentation.

Ms Wilson: I left copies, if people would like copies or members would like copies.

The Chair: Thank you.

1110

SEVENTH TOWN HISTORICAL SOCIETY

The Chair: The Seventh Town Historical Society. You're here. Great. Good morning and welcome. You have 15 minutes for your presentation. If you leave time within that 15 minutes, there will be an opportunity for questions, should you choose to do so.

Mr Ian Reilly: Thank you, Mr Chair. My name is Ian Reilly. I am president of Seventh Town Historical Society. The name "Seventh Town" comes from 1783, when the British surveyed the original eight towns, starting with what is now Cataraqui and ending at what is now Sidney ward in the city of Quinte West, as they prepared for the arrival of the Loyalists after the American Revolution. Seventh Town became Ameliasburg, named after Amelia, the daughter of George III.

We have 135 members across Canada, the USA and New Zealand. We own and operate the Marilyn Adams Genealogical Research Centre, a research library containing genealogical research material from across North America, Europe, New Zealand and many other areas of the world, with emphasis on Ontario and the Quinte region.

The Marilyn Adams Genealogical Research Centre is a two-storey, modern, wheelchair-accessible building with up-to-date computers, a microfilm/fiche reading room and a microfilming lab where we film historic documents: genealogies; local municipal, church and other organizations' histories; early atlases and maps; Hastings county land records from before 1867 to past 1955; Tudor and Cashel township records going back to

the 1850s; Ontario birth, death and marriage records and microfilm indexes; census microfilm for much of eastern Ontario; and cemetery transcriptions for much of Lennox and Addington, Hastings, Prince Edward, Northumberland, parts of Durham, parts of Haliburton and Peterborough counties, totalling over 264,000 stones and over 300,000 names.

In the past summer, our library grew by 120% and the core value went up by 167%, bringing the value of this library and its related assets to about three quarters of a million dollars, and that is without counting our priceless records. Our on-line database, a names database, is now over 1,135,000 names, with thousands of people accessing this site and our Web site.

We are staffed totally by volunteers, who put in about 10,000 hours a year in the library, in the field transcribing cemeteries and performing other duties.

We also have a group known as the Friends of Marilyn Adams, which has over 325 members from around the world who support our activities. Hundreds of people seeking Quinte and Loyalist roots visit us every year, some staying as long as three weeks. These are people looking for the answers to where they came from, where their family is buried and where their ancestors are. Unless you have stood at the grave and touched the stone of your ancestor who died as much as 200 years ago, you cannot know the feeling of connection it provides.

The University of Canterbury, Christchurch, New Zealand, is conducting a study of migration patterns of people moving back and forth across borders in the 18th and 19th centuries. The head of their anthropology department, Arnold Parr, has used the Marilyn Adams Genealogical Research Centre as his base of operations in Canada each of the past three summers, with another five to go to complete the study.

The time when only North Americans looked offshore for their roots has changed, as those from Europe and elsewhere are coming here. These people visiting us spend a lot of money, both locally and getting here, and they all agree on one thing: If they visit or attempt to visit cemeteries, cemeteries, by and large, are in very bad shape.

We are proud to be part of the Ontario Historical Society. While we are only 35 years old—and I might add that the Marilyn Adams Genealogical Research Centre is only 10 years old—they started trying to preserve and protect cemeteries in the 1890s. We are fully involved in this great effort to preserve this important part of the history of Ontario and Canada, which tells the story of our multicultural people and the life-and-death challenges they faced, as recorded on many grave markers.

I was born in Toronto. I spent most of my life in Northumberland, Hastings and Prince Edward counties. My fourth great-grandfather was John Weese, the first permanent settler, in 1784, in Seventh Town—Ameliasburg—if not the first permanent settler in Prince Edward county. He was a Loyalist of German descent, part of the cultural mix that arrived after the American

Revolution. They began to build Upper Canada and Ontario, as well as our way of life, which is now even more diverse in its multicultural makeup.

Not to protect his gravesite and that of all those who came with him and their descendants up to and past now is to abandon our history and the places where it is recorded and visible, which are not all buildings and locations where treaties were signed, such as the Gunshot Treaty, lighthouses, mills, barns that were built and quaint main streets that have evolved, to mention only some Ontario history that is and needs to be preserved.

There are two types of cemeteries in Ontario that need provincial protection under the Ontario Heritage Act: (1) inactive cemeteries, including those places where the earliest settlers were buried; and (2) active cemeteries that are still open to further burials.

The important thing to remember is that the first type, the inactive cemeteries, have very few and in some cases no one to speak for them. They are the most vulnerable and threatened by development, while the second type has many to speak for them, such as the plot holders, living relatives, friends, the owners of the cemeteries and others.

Can we save our cemeteries, especially those that are inactive, in an ever-changing society? We think the answer is yes, but it will only happen if the provincial Legislature shows leadership by amending the Ontario Heritage Act to clearly protect inactive cemeteries in their original locations.

Municipal governments generally have not protected cemeteries and can be expected to do less in the future as tight finances and exploding development pressures continue to worsen due to amalgamation and age-related population shifts. Land values are rising very rapidly in the Quinte area, as across Ontario, and many cemeteries are on prime land, such as waterfront, where the municipal tax base can be enhanced by more development. With developers putting on more and more pressure, can we expect local councils to always act for history and heritage? I personally doubt it.

Municipal cemetery boards are appointed or re-appointed every three years by ever-changing councils, not a good mix for continuity, but the way it is and will be. Only the Ontario government, through the Ontario Heritage Act, can protect cemeteries. We know from experience, having two of our members, myself and Hugh Heal, the chair, on the Prince Edward cemetery board, the problems faced by these boards. I might add that I also served on the Prince Edward heritage committee prior to the cemetery board.

There is no heritage protection for cemeteries in the Cemeteries Act, which is administered by the Ministry of Consumer and Business Services, a great place for the business end of cemeteries. We are certain that those administering the act know about business, but they demonstrated that they are not tuned in to the cultural needs of Ontarians when they joined with municipal governments and developers and said it is in the public

interest to move cemeteries and build houses and condos in Markham and Palgrave.

As I mentioned earlier, these inactive cemeteries are a huge tourist asset. Why would the province want to help municipal politicians and developers destroy them?

It is true that these cases were overruled by tribunals, but only after hundreds of thousands of dollars were spent by the government and the heritage community to prove the obvious to anyone involved in culture and heritage. Our members donated money to these legal battles and paid taxes to help offset the government costs. Think what could have been done with that money to assist in cultural preservation, including restoration of inactive cemeteries.

The revised Ontario Heritage Act needs to spell out that cemeteries, especially inactive cemeteries, are a part of our history that needs to be preserved by the province of Ontario for Ontario and Canada.

1120

When our descendants look back to the 20th and 21st centuries, do we want them to shake their heads and ask why we did not do something to protect all historical places to the best of our abilities? To do nothing may mean that your grandparents', your parents', your children's and even your own grave may be the next host of a condo. Even worse, it may just disappear, as many in Ontario already have, such as the two cemeteries on Big Island in Prince Edward County, where the stones just disappeared in the last few years and what is under the land went back to agriculture.

I've included some pictures which are captioned: One is of a group taken in Prince Edward county of the remains of a cemetery that stood in a field over 40 years ago, when it was recorded by historian Loral Wanamaker as having 17 stones. It was partially dug up in the spring of 2004 by a group led by Mr and Mrs Emmerson Smart, in their 70s and 80s, of Newbury. It somehow got moved and buried, and became part of a fence bottom. You'll find those pictures—there are three pages of them—at the end. It says who they are and what they're doing.

I'd like to thank you for this opportunity to address this very important issue, and I'm prepared to try to answer any questions you may have.

The Chair: Thank you very much for your presentation. We'll start with Mr Marchese, if he has any questions.

Mr Marchese: Yes, I do. Thank you for your presentation. I want to ask you, have you talked to any of the ministry staff and/or minister or parliamentary assistant or other staff with respect to this? What have they told you?

Mr Reilly: I haven't talked to any of those people. The only person we've talked to is our local member, Mr Ernie Parsons. He's quite in favour of our position and spoke to a group of 80 people 26 days ago, actually. He said that he was in favour and, in fact, delivered the petitions of those people directly to the House.

Mr Marchese: That's great. We're glad. Ernie, hopefully, is speaking to the caucus in the background, urging them to do the right thing.

The other thing is that we believe cemeteries should be protected. You and others made the case that, with the example of Clendennen cemetery and Palgrave cemetery, we discovered not only that the Ministry of Business and Consumer Relations wasn't supporting cemeteries, which you would think would be their job, but also that municipalities weren't doing that either. So when the parliamentary assistant last week said that cemeteries are protected in this act, you would argue, as I would, that they're not, and that you can't rely on municipalities to designate cemeteries because, with those two examples, we've seen how they don't protect our cemeteries. So obviously, you support the idea of making sure the language is in the bill to protect them. Otherwise, we're in trouble, right?

Mr Reilly: Absolutely, because money's involved in all the parties that you just mentioned.

Mr Marchese: And you're going to go back and talk to Ernie so that he lobbies the parliamentary assistant quickly, because tomorrow morning, we're introducing these amendments.

Mr Reilly: We understand that. We have talked to him. In fact, I talked to him as short as a week ago.

Mr Marchese: OK. So Ernie must have made the call to Jennifer Mossop.

Mr Reilly: So I've talked to Ernie, and I'm sure you all know Ernie.

Mr Marchese: That's great. Thank you very much.

The Chair: The government caucus?

Ms Mossop: Thank you very much for this presentation. Ernie has not lobbied me, and he doesn't have to, because I do support what you're saying and I have already made inquiries, as I mentioned to the other delegation that just came in here. What we have said is that cemeteries are covered in the Ontario Heritage Act presently. They are covered by real property. We've discussed the issue of having to clarify that a little bit more distinctly, and we're working on those issues.

You ask why at this point the province would want to help municipal politicians and developers destroy cemeteries. We don't want to. The whole concept of Bill 60 is to make the Ontario Heritage Act stronger so that it can protect all the property covered under it. There are 140 cemeteries presently designated. I understand the issue of the inactive cemeteries. The sense is that they are no different and that they are, too, covered under the Ontario Heritage Act and that Bill 60 will give municipalities and people better ability to protect cemeteries.

Having said that, we are also undertaking to work with the Ministry of Consumer and Business Services, and our minister is going to be working with the Minister of Consumer and Business Services to make sure that we go forward in the direction we all want to go in.

The other thing is that you mentioned—

Mr Marchese: Ask him some questions.

Ms Mossop: I think it's my turn, Mr Marchese. I just wanted to clarify also that, when you were talking about the tribunals, my understanding is that three cases went to the OMB. One was withdrawn because the hue and cry was too great, and the other two were successfully appealed. There was a cost of \$100,000 to the historical society. So we appreciate that and would like to try to avert those situations in the future.

Mr Reilly: There were even more costs than that, madam. There were costs to the government. I mean, as soon as you hire lawyers, \$100,000 hardly pays the first day. I know. I've hired thousands of them in my day, seriously; hundreds at least.

But the big thing is, I don't quite agree with you that cemeteries are already covered in the act. When you asked the last presenter if she was comforted by that—I'm not comforted at all. I even feel that by the time it's passed, there will be less protection than there is now. We need a clear statement to say that cemeteries are covered by the Ontario Heritage Act. That isn't going to interfere with the Cemeteries Act in the other ministry.

The reason is that some cemeteries are not cemeteries, as in everybody's mind. For instance, last week representatives of the Seventh Town Historical Society were in the woods. We put up steel stakes around one cemetery and erected a cross because it was about to be lost. And there are no names; they're unknown sailors down on Point Petre who had been buried there, seven or eight of them, since 1883. I don't think that's covered by the act.

We went to another one, which is one of the earliest cemeteries in Upper Canada, and we have unearthed 50 stones at the moment, in the woods. Some of the stones are that high, some are that high, some are that long. They're all pieces of shale, which was all people had. They couldn't call up our friend the undertaker in those days. They just took them out behind the house about 800 or 900 feet, dug it up and buried them and they've become regional burial grounds. Those cemeteries are now being found. We found another couple already this last fall. They're burial grounds, not cemeteries as we think of them. We think of cemeteries as nice stones. You go to Glenwood and there's a mausoleum. You go up the street where there are some nice cemeteries. They could maybe be classed as buildings. I don't think we can count those other burying grounds. They're the ones we have to protect. That's where the very first people gave their lives, so that we can sit here today and have this debate about whether we should protect their graves or not. So I'm not comforted at all. I think you can put a few lines in the act which will not encumber the Ministry of Consumer and Business Services in the administration of their act, other than to point out that, when they're dealing with it, it's the government's policy and the policy of the people of Ontario that they're dealing with historical sites. When it comes to money, they know all about it. When it comes to historical sites, they don't, and they've proved it.

I don't agree with you. I don't feel comforted at all, but I think I will if you do your job.

The Chair: That's all the time we have for questions. We'll have to move to the—Ms Munro, do you have a quick question?

Mrs Munro: Yes.

The Chair: Go ahead.

Mrs Munro: I appreciate, Mr Reilly, you coming here today because certainly last week we were given an indication that it was covered. Clearly by the deputants that we've heard today and the kind of examples you've provided for us, whatever that comfort was that we were given last week has certainly dissipated.

I agree with you that we do need to move very carefully in this area and to understand the difference, as you've pointed out—that we're talking about burial grounds in some cases. I would simply want to say to you that we will be holding the government's feet to the fire on this issue.

Mr Reilly: Thank you, and thank you, Mr Chairman and members, for this time.

The Chair: Thank you very much for your presentation.

1130

ONTARIO GENEALOGICAL SOCIETY

The Chair: The Ontario genealogical association: Good morning and welcome. You have 15 minutes for your presentation. Should you wish to leave any time in the 15 minutes, there will be an opportunity for questions.

Ms Marjorie Stuart: Good morning. Thank you for the opportunity to address. My name is Marjorie Stuart, and I am here today on behalf of the Ontario Genealogical Society, OGS. The OGS board of directors, at a meeting held on November 20, 2004, passed a motion that the Ontario Heritage Act be amended to recognize the cultural, historical and natural heritage value of Ontario's cemeteries.

1130

OGS was established in 1961. We are a provincial non-profit corporation and a registered charity with 30 local branches in communities across the province of Ontario. The mission statement is to encourage, assist and bring together all those interested in the pursuit of family history. Our current membership is over 5,000 individuals, organizations and institutions. Our membership is worldwide, although there is naturally a heavy concentration of members who reside within Ontario. It is safe to say that the 5,000 have an interest in the preservation and protection of Ontario roots, particularly cemeteries where our ancestors are buried.

I am a family historian who has volunteered for over 50 years, working across Ontario, preparing family histories, recording cemeteries and assisting cemetery boards, historical societies, museums and other heritage organizations to preserve and protect Ontario's cemeteries, especially Ontario's inactive cemeteries. Since

1989, I have been the OGS representative on all legislation affecting cemeteries, particularly the Ontario Heritage Act and the Cemeteries Act. I also represented OGS when it appealed the Ontario government's 1995 order, that is the Cemeteries Act, that it was in the public interest to dig up and move the Clendennen cemetery in the town of Markham for a luxury condominium development. At those provincial appeal hearings, I was recognized by the tribunal as an expert witness in the heritage value of cemeteries.

Few realize that tombstones and grave markers in inactive cemeteries are very often the only record of a person or even a whole family. Civil registration did not come into effect until 1869, but it was not compulsory to register a birth or death until 1912. The first census which recorded all family members was in 1851. Those of us who research into a cemetery often find an entire family that died in a short period from smallpox or other diseases. Their tombstones stand as a silent sentinel and are the only record of that family's existence. Those who administer a cemetery are custodians of an outdoor archive with records carved in stone that do not exist elsewhere. These are original, authentic, irreplaceable heritage documents that are not protected by either the Cemeteries Act, the Ontario Heritage Act or the proposed amendment to the Ontario Heritage Act, Bill 60, as presently worded.

The OGS position is that all our inactive cemeteries are of equal importance to the heritage of Ontario and that they must be protected by the province. It is our experience that many local municipalities in Ontario do not have a heritage conscience or the inclination to preserve these cemeteries. Our members see escalating land values and a variety of threats and pressures to relocate our cemeteries. For example, since last April, the Haynes cemetery, of 1784, in St Catharines has been under siege at great cost emotionally and financially, including legal costs, to the family. There was no legislation that clearly protected this cemetery.

In Northumberland county, there are two cemeteries, Russ Creek and Red Cloud, which have outstanding natural features with native grasses that are endangered species. The only other place that some of this plant life remains today is Walpole Island. At Russ Creek cemetery, descendants urged the municipality to preserve this cemetery. In the end, the descendants took the municipality to court, which cost local taxpayers almost \$100,000. They won their case, but the unique natural features are still at risk.

In fact, in recent years, my colleagues and I have donated our time to work tirelessly with families on countless cases where their ancestors' final resting places were and continue to be threatened by development. Those who contact us cannot fathom that a burial place is not sacred.

I could cite many recent examples today, but there isn't time. To mention just a few: Spookhorn, 1786 to 1836, in the Napanee area where the municipality, which has been the custodian for decades, has recently approved

dividing and selling the cemetery in five separate parcels; and in West Gwillimbury, the municipality has allowed a local farmer to remove a fence and the tombstones and to plough the land and plant corn on the site of the 10th Line Methodist Cemetery, which was established in 1826.

Quite obviously, the protection of Ontario's inactive cemeteries by municipalities is totally unpredictable and unreliable.

Across Ontario, families are spending their money to defend cemeteries. Since 1995, OGS and the Ontario Historical Society have spent hundreds of thousands of dollars at appeal hearings to stop the province of Ontario from relocating cemeteries for private real estate development. I refer to the Clendennen case and the St Alban's Anglican Church cemetery case. We estimate that in those two cases it cost taxpayers close to \$1 million to argue that it was in the public interest to dig up and move these two pioneer cemeteries so that private developers could benefit.

Let me illustrate again why we do not feel that we can rely on municipalities to protect the interests of descendants and inactive cemeteries. In the Clendennen case, the town of Markham joined the developer and the province of Ontario in vigorously opposing full participation in the public hearings by the Clendennen descendants. I had researched and assisted the Clendennen descendants. They wanted to testify to support the OGS position that their family cemetery should not be desecrated for real estate development. Needless to say, the Clendennen family were deeply distressed that both levels of government would try any tactic to prevent them from participating at a public hearing on the public interest. In the end, after an expensive battle, Harold Clendennen represented his family and testified. In 1999, the tribunal ruled that it was not in the public interest to relocate the Clendennen cemetery from its original location.

OGS believes that this is a disgraceful situation and that the Legislative Assembly has a duty to include cemeteries in the Ontario Heritage Act, Bill 60, so that very scarce private and public resources and volunteer time are spent on more productive projects.

OGS is very alarmed and disturbed at the increasing rate of vandalism and incidents of racism in our cemeteries. A new Heritage Act that clearly fails to recognize and protect our vulnerable and threatened cemeteries is unacceptable. It sends a message that the province doesn't really care, and that clearly is not in the public interest.

The Ontario Heritage Act does recognize Ontario's built heritage and, when passed, will help to preserve that important part of our heritage. But with respect to cemeteries, your government inherited a terrible mess. Now, you have a rare and historic opportunity to address these problems and chart a new direction for our ancestors and descendants.

Therefore, OGS recommends that Bill 60, An Act to amend the Ontario Heritage Act, (1) state clearly that all inactive cemeteries are of provincial interest and importance and are a significant part of the cultural, historical

and natural heritage of Ontario and, (2) state that it is in the public interest that all of Ontario's inactive cemeteries be protected, preserved and maintained in their original locations.

I am confident that if these changes are adopted, the OGS and its members will join the government of Ontario in a new partnership to preserve Ontario's heritage. Thank you for this opportunity to address this committee.

The Chair: Thank you. Ms Mossop.

Ms Mossop: Thank you very much for your presentation and for making the time to come here today to talk to us about this issue, which is of concern to all of us around the table, obviously.

As I've mentioned before, this is something that I've been actively discussing with ministry staff and the minister. At the moment—and I'm going to reiterate "at the moment"—active and inactive cemeteries are covered under the Heritage Act where it says "real property." The previous gentleman had said that some of the areas he was concerned about, some of the inactive cemeteries, weren't even called cemeteries. So my worry is in the wording. If we start to try to specify cemeteries—inactive cemeteries, burial grounds, buildings, what type of buildings, bridges, fences, all those sorts of stuff—we might actually leave something out. There might be an omission. That's why I am, actually, comfortable with "real property," understanding that that includes cemeteries, burial grounds. And I do have an undertaking from ministry staff to be more specific about that in its communications.

The new bill gives more teeth to protect all real property, including cemeteries, inactive cemeteries and burial grounds. As I say, I'm worried about getting into specifics because I'm worried about there being an omission. We also have the undertaking from the minister to work with Minister Watson with regard to the Cemeteries Act.

Do you agree that these measures are taking us in the direction that we are all concerned about?

Ms Stuart: I think we'd feel more comfortable if the words "burial ground" or "cemeteries," something that denoted a burial location, were in the act. The act really covers built heritage. Yes, there are also mausoleums and tombstones and so on, but there are also cemeteries that have nothing on them. Nobody is aware of the fact that they are a cemetery, and those seem to fall between the cracks.

Ms Mossop: The term is "real property" in the act.

Ms Stuart: I'd like to see the word "burial ground" or something that denotes burial ground.

The Chair: We need to move to the Conservative caucus. Ms Munro?

Mrs Munro: Frankly, I'm troubled by the comments that have just been made with regard to staying with the "real property" definition because it seems to me that throughout the morning we've heard the way in which that has been open to challenge. Obviously, you wouldn't have the cases that you can recite to us if in fact the current wording had been definitive in a way that

wouldn't have even allowed municipalities and developers and so forth to challenge that wording.

Certainly, from our position, we understand the points you have made with regard to the opportunity for challenge and will keep the government's feet to the fire, so to speak, to make sure that that kind of clarification is there to avoid the kinds of things that you are able to bring forward here today.

I totally agree with you. As a taxpayer, as a donor, we're funding both sides of this argument. That doesn't make any sense at all.

The Chair: For the NDP caucus, Mr Marchese.

Mr Marchese: Thank you for your presentation. We take no comfort in the comments made by the parliamentary assistant. We really believe language needs to be included in the act.

At the moment, in part IV it says, "designated property" means property designated" blah, blah, blah, and then "property" means real property and includes all buildings and structures thereon."

The next page talks about the designation process: "Subject to subsection (2), if the council of a municipality intends to designate a property within the municipality to be of cultural heritage value or interest, it shall cause notice of intention to designate" and so on.

The way I understand it, if a city council decides not to designate it, then it doesn't get designated. So you leave it to the municipality to determine the designation on the basis of cultural heritage value or interest. If they decide differently, what do we do? There isn't even a third party intervention that would permit people to take it to the OMB.

I'm not sure what Jennifer Mossop is talking about by tweaking the language, and it certainly can't be tweaked in the other ministry. The language needs to be in this document. I hope you're here tomorrow when we're discussing the specific language about how to protect heritage, because I don't think we're going to—

Ms Stuart: It's going to be discussed tomorrow only?

Mr Marchese: Yes. Is that the case?

The Chair: Clause-by-clause tomorrow at 10.

Mr Marchese: Clause-by-clause?

The Chair: Tomorrow at 10.

Mr Marchese: Thank you.

The Chair: Thank you very much for your presentation. That's all the time we have.

ANGLICAN, BAPTIST,
EVANGELICAL LUTHERAN,
PRESBYTERIAN, ROMAN CATHOLIC,
AND UNITED CHURCHES IN ONTARIO

The Chair: I'd like to call the next group—the Anglican, Baptist, Evangelical Lutheran, Presbyterian, Roman Catholic, and United Churches in Ontario—forward, please.

Good morning and welcome. You have 15 minutes. Any time that you don't use will be allocated for questions to the various caucuses here. Please proceed.

Bishop Richard Smith: Mr Chairman and members of the committee, we would like to thank you most sincerely for allowing us to speak with you this morning.

I'm Bishop Richard Smith, Bishop of Pembroke, president of the Ontario Conference of Catholic Bishops. With me are Bishop Colin Johnson, Anglican bishop in Ontario; Bishop George Bruce, Anglican bishop in Kingston; Ken Pennock of the United Church of Canada; and Archdeacon Harry Huskins of the Anglican Church here in Ontario. We represent together the Anglican, Evangelical Lutheran, Roman Catholic and United Churches in this province.

We're very pleased this morning as well to have the Baptist Convention and the Toronto and Kingston Synod of the Presbyterian Church join us in presenting this brief to you.

Over 30 years ago, we strongly supported the introduction of the original Ontario Heritage Act and its intention of preserving buildings of importance to our communities because of their beauty and history. We continue to strongly support this principle and the many parts of the bill that reinforce this. Other portions of the bill before you, however, create very serious difficulties for us.

The churches in Ontario are the single largest non-governmental group affected by this bill because we have so many buildings across the province that are already designated now, or may be in the future. These buildings exist, however, because many faithful people in the past donated time, energy and money to further the mission and ministry of Jesus Christ, and erecting these buildings was part of their contribution to doing so.

When the churches accept funds from faithful people, given for mission and ministry, we consider this a moral trust. These people have trusted us to use these funds for this purpose in the most effective way we can. In many cases, continuing to use these buildings as they are is still the best way of honouring this trust and of keeping faith with these people who have gone before us.

As is only to be expected, however, circumstances change and in some cases this can no longer be done, and for many of our older buildings this will increasingly not be so.

The principle on which this bill is based is a good one, but what happens when it comes into conflict with this moral trust? What happens when the most effective way of carrying out ministry is to make major alterations to these buildings, such as new space for social outreach programs, Out of the Cold facilities, affordable housing and other community-centred facilities? What happens when the most effective way of carrying out mission, and honouring this trust, is to dispose of the building and the site, thus freeing up the funds originally donated and using them for mission in another, more effective location?

The principle of the bill is clear. Communities, and now the province as a whole, may designate buildings of specific worth, and the community's interest then prevails over that of the holders of the buildings. That building must be maintained under the terms of the act. The bill before you, however, is premised on there only being two sectors: governments, who hold buildings and can continue to maintain them out of public revenues, and commercial enterprises, who can either raise the price of their product or sell the building to another commercial owner who will maintain it.

The churches are a very large stakeholder, yet we have no place in this structure. The money our faithful people put on the offering plate on Sunday mornings maintains our buildings. What happens when a congregation that had 500 people in the pews a century ago finds itself with only 50 today? People know that they no longer have the money to carry on as things are and realize that effective ministry calls either for major alterations to the building or a move to another location where their ministry can be effectively carried out.

A commercial enterprise can sell its head office to another commercial enterprise, but there is a very limited real estate market for church buildings that have been designated under the act, particularly outside the greater Toronto area. Very few potential purchasers want to assume the responsibilities required of them by this act, and this both limits the ability to sell the building and substantially lessens its value.

Under the terms of the bill, the shrinking congregation can no longer pay for spiralling heating and insurance costs, yet it cannot adapt to better kinds of ministry or free up the assets for mission elsewhere. The point comes when it cannot carry on, worship services cease, the building and property then become subject to property taxation, worsening the financial situation, and it inevitably defaults to the municipality for unpaid taxes. These are the likely consequences we foresee if this bill is passed as it stands.

It seems very much in conflict with the opinion of the Supreme Court of Canada when it considered this aspect of the Ontario Heritage Act. Writing in judgment, the Supreme Court said, "It is equally evident that the Legislature recognized that the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, certainly not in total disregard of the property owner's rights."

1150

This present review of the act was in response to the concerns of citizens, historical groups and local architectural advisory committees. It is the community at large that wants to preserve these buildings, and rightly so. But the responsibility for maintaining the unique features of the structure and the resulting cost is imposed exclusively on a small and shrinking congregation. This is very much at variance with what has been done in other jurisdictions such as the United Kingdom, Europe and Quebec.

An attempt to balance this is provided in a provision for appeal to the Ontario Municipal Board. We must be frank in telling you that most of our congregations cannot afford to retain lawyers and various kinds of experts and would be entirely overwhelmed by the procedural implications of such an appeal. Even in this, however, the options available to the OMB on appeal are limited. We believe that these should be expanded to enable the board to require a designating authority to purchase a building they've designated if the current charitable holder cannot sell the building for a reasonable price. This is consistent with the position taken by the Supreme Court, but it is not the position taken in the bill as it stands.

The argument has also been advanced that most churches have not been designated. In the words of Winston Churchill, "It is no comfort to be told that few men are wrongly hanged, if you are about to be one of them." This is the situation that our congregations that have been designated find themselves in, and it completely overlooks that question of how many more may be designated in the future. We do not think that this needs to be so, and we do not think that this was the intention of the drafters. There are other ways of proceeding that ensure preservation and allow the designating authority to assume responsibility for helping to maintain the building or purchasing the building at fair value, as is done in many other jurisdictions.

No one in the ministry developing the text of this bill has talked to the churches about any of this or, it would seem, with the school boards, which are also major stakeholders. None of the advocates who want these changes have asked us to work with them to resolve these difficulties before this bill has come to you.

This has not been our experience with other pieces of legislation put forward by governments of all three parties represented here today. Only recently, we presented a brief to the committee dealing with the Health Information Protection Act, in which amendments were made that resolved a number of difficulties to everyone's advantage. Even now, we are working with a number of ministries on matters such as the development of regulations for the new cemeteries legislation and the regulations under the Safe Drinking Water Act, which had serious unintended effects on our rural congregations as originally written, but which are being resolved in a spirit of mutual benefit and collaboration. This is not the case with this bill. As it stands, this bill will create and not solve problems in our sector.

We want this act to do the best possible job of preserving our heritage. We pledge to you our fullest collaboration with the government and our fullest cooperation in working with the advocates of the changes in this act to find the right balance that achieves its ends in the best possible way. Given the very difficult situation we have been put in because of the lack of consultation, we must ask that this bill not go to third reading as it stands.

Thank you very much for allowing our presentation. We're happy to entertain your questions.

The Chair: Thank you for your presentation. We have a couple of minutes for questions. The Conservative caucus: Ms Munro, do you have any questions?

Mrs Munro: Yes. I really appreciate your coming here today and providing us with this perspective. Clearly, the fact that you have had no consultation in the process of this bill has left an enormous hole, I would argue, in the fact that you are a major holder of built heritage across the province. Certainly, I would agree with you that the notion of being left with the consequences of this could be quite disastrous from the perspective not only of the church, but also of the community, where there is no opportunity for the kind of maintenance and preservation that is particularly expensive and without having the opportunity to do anything with the building.

The obvious question for me to ask you is, of course, what particular recommendations would you have? I have a sense that I already know the answer to that question, but I do think that it is an issue upon which greater discussion and consultation needs to be taken. Your suggestion with regard to assuming responsibility or purchasing the building at fair value—I wonder if you could put that in a context of other jurisdictions, because you mentioned a couple.

Bishop Smith: I think Archdeacon Huskins can speak to that very well.

Archdeacon Harry Huskins: Maybe just a brief comment on that. What we would really like to see preserved in this bill are the two elements that are common in, say, European jurisdictions, the United Kingdom or Quebec, in which there is a balance between the community's need to preserve something of particular beauty or historic value, but at the same time a recognition that often the current property holder is incapable of financing that. So where the importance to the community prevails—and that's a judgment the community should make—the community also assumes a shared responsibility for maintaining that in some way, or, as I think has been suggested by a number of other deponents, in the last resort, particularly in our case, if a struggling congregation is down to three or four people and cannot do it any longer—they can't sell the building for any reasonable price—in that case the designating authority assumes the responsibility for that. I don't know if that's any help to you.

Mrs Munro: It certainly is, in the sense that we know other jurisdictions do a very good job in the preservation of their built heritage.

Archdeacon Huskins: As I said, our problem is that this stresses one element over the other.

The Chair: We have time for just one more question. Mr Marchese, make it quick, please.

Mr Marchese: Thank you for your presentation. I want to support the argument, because when we put restrictions on what people can do, in this case churches with property that was given to them in trust in the way you presented, then it seems to me that governments have to play a bigger role of financing that particular common

good. We can't, in my view, leave it to the municipalities because we are downloading so much on to them that they have such limited resources in terms of where they can get the money from property taxes that it would be an undue burden, in my view, to have the designating authority, which in this case is the municipality, pick up the cost.

That's why we're introducing a motion that says that the province ought to give support, either in the form of a tax credit or a grant. It may or may not be enough—I'm not sure—in terms of what you think might be adequate to compensate for the costs you're talking about. Originally, we felt the property owners of designated buildings needed some support, and I think a tax credit or a grant might do it. I'm not sure whether that would do it for you.

Archdeacon Huskins: The problem with a tax grant, of course, is, as long as worship services are conducted in a church building, it's not taxable. The inner-driven logic in the bill as it stands now is, if the maintenance costs become too great and the congregation ceases holding the worship services, it immediately becomes taxable, doubling the burden or tripling it. The last thing municipalities want is for it to default to them and they then end up with the maintenance of the entire building, as opposed to part of it. So you can see that there's a very difficult dilemma in here.

We would love to work on coming up with some kind of creative, innovative solutions to this, looking at what happens in other jurisdictions, but frankly, we've had less than a week to do this.

Mr Marchese: You would support a delay, is what I hear you saying. I'm not sure you can come up with an agreement in the next few hours.

Archdeacon Huskins: If you could come up with the language to fix the problem, we would be delighted. But in less than a week—you can imagine what consultations among six major denominations are like.

Mr Marchese: We're dealing with this tomorrow morning, by the way. So you don't have much time.

The Chair: That's all the time we have for your presentation. Thank you very much.

1200

CITY OF TORONTO, HERITAGE PRESERVATION SERVICES

The Chair: City of Toronto, Heritage Preservation Services, Councillor Kyle Rae.

Good afternoon. Do you have a written presentation?

Mr Kyle Rae: Good afternoon. Yes, we do have a written presentation. I'm Kyle Rae, city councillor for ward 27, and this is Brian Gallagher from the Heritage Preservation Services of the city of Toronto.

The Chair: I just remind you that you have 15 minutes for your presentation. If you leave any additional time, there will be an opportunity for questions, should you choose to do so. Please proceed.

Mr Rae: The city of Toronto would like to congratulate Minister Meilleur and her staff and the Liberal government for bringing forward this bill amending the Ontario Heritage Act. Heritage preservation is a critical element in building the livable city of Toronto.

These amendments are important to the city. City council took a position on these amendments on October 26 of this year. The proposed amendments are, for the most part, a step in the right direction for the cause of the protection of heritage resources in the province. The city is very pleased, for example, at the proposed allowance for heritage property maintenance standards and increased protection for heritage conservation districts. In fact, I'd like to say, I've got three heritage districts in my own constituency, and they've all been warmly received by the residents in downtown Toronto. A full report on the city's input is now being circulated.

Today I would like to touch on three main areas: demolition control; the issue of proposed exemption of provincial and, potentially, other heritage properties from municipal review; and the newspaper advertising issue.

First, demolition control: I know the minister, Madame Meilleur, has had the opportunity recently to meet and hear from Anthony Tung, who is the former head of the New York Landmarks Commission and a well-known authority on heritage preservation. Mr Tung's message is that to really make a difference in heritage preservation, the province needs a binding law on demolition of heritage properties. This bill goes a long way toward achieving that objective.

The city strongly supports the provision of stronger demolition control. To make the new provisions for demolition even more effective, we suggest that the right to appeal a municipal decision regarding demolition be extended to everyone, not just the property owner. Also, the appeal should be to the Conservation Review Board, similar to the appeal process currently in place of councils' decisions regarding designation of properties.

If you wish to proceed with the appeal, as you've suggested, to the Ontario Municipal Board, we have a concern. Your bill today suggests that the OMB may invite a member of the Conservation Review Board to sit with them. The city feels it should be a requirement that a member of the Conservation Review Board join the panel; otherwise, the OMB may not have sufficient expertise to address the heritage impact of demolition. We have consulted with colleagues in other cities across the province, and officials in Ottawa have the same concerns as those of the city of Toronto.

Exemption from municipal oversight for provincial and possibly other properties: The city's main concern is with the proposal to specifically exempt from review by the municipality all provincially owned properties, including Ontario Realty Corp and the former Ontario Hydro properties, plus the property of any agency the province puts on the list as prescribed public bodies. The province's rationale is that some municipalities do not act to protect provincial heritage buildings, so this will bring

the buildings into the provincial fold and provide protection across the province.

However, the proposals will eliminate open public involvement in decisions regarding demolitions and alterations for all provincially owned properties plus the agencies that are arbitrarily added to the list of prescribed public bodies. The current municipal process for decision-making regarding heritage properties is open, it is accountable, and it carries appeal procedures. The proposed system would be carried on in-house, behind closed doors, without any requirement for public involvement or any opportunity to review the decision.

The amendments also propose that the minister may create standards and guidelines to be used by the province and the agencies to govern demolitions and alterations to their heritage buildings. The ministry itself says that it will take years to institute such procedures. In the meantime, there will be no effective oversight for the province's heritage buildings, and the municipalities will be helpless in trying to preserve these heritage resources. If the proposed system is mandated by the amended act, at least the legislation would require the minister to create the standards and guidelines before municipal review of these properties is ended.

Staff are concerned that the province may add agencies such as the University of Toronto or the school boards or the art gallery, the AGO, on the list of prescribed public bodies.

The city recommends that rather than exempting the province and potentially other agencies, all of these should be made specifically subject to part IV and part V of the act, the parts that allow municipal review. This will achieve the province's stated objective of heritage preservation better than the provincial proposals, as all interested parties will have the ability to be involved.

Nothing prevents the province or other agencies from properly caring for its own buildings, even if they are subject to municipal review. However, having municipal review can protect the building that may fall through the cracks. If the province wishes to have standards and guidelines for its own properties, that is fine, but they should be combined with the existing system of municipal review. The Planning Act gives the precedent, in that it makes certain that properties of Ontario Hydro are subject to the Planning Act.

As an aside, I can speak directly to this issue of provincially owned properties not being properly maintained by the province. The wonderful heritage buildings on Jarvis Street known as the Massey buildings—one of them is The Keg; I think the other one is Gooderham House—and the two on the street behind were in the hands of the Ontario Realty Corp under the last government, and they were deteriorating dreadfully. The roofs were collapsing. The city of Toronto intervened when the province was trying to sell them and designated them so that any new property owner would know they would have to maintain them. The province failed to maintain its properties; I'll make that very clear. We have a case in point.

On the issue of advertising, one final comment: The current act requires newspaper advertising for various actions under the act, including designation. Newspapers must have general circulation in the municipality. Although this may not be an onerous requirement in many areas, it is very expensive in the city of Toronto. The city proposes that municipalities be permitted to determine their own notice requirements as part of their official plan. Alternatively, advertising in community newspapers would achieve the objective of public notification and education. A provision which addresses the unusual situation in Toronto would be helpful to the cause of heritage preservation.

I'd like to thank you for your attention on this matter. I'd be very happy to take questions, as will Mr Gallagher.

The Chair: We'll start with the government caucus, if they have any questions.

Ms Mossop: First of all, thank you very much for your time today in coming with these recommendations and also for the work that you do. We've run into each other a few times now at various events, so I appreciate everything that you do.

There is sort of a starting point in the bill that indicates that the province does have to get its own house in order in terms of looking after its properties, and that is recognized in this. Of course, you also understand the cost involved in that. That's part of the issues we're dealing with here. You do recognize that is something we are making a point of: that we do have to start to lead by example, and we have indicated that we're going to begin those measures in this bill.

Mr Rae: I understand that. I think what's important, though, is that the city has a great heritage in dealing with heritage matters. So I think it's more useful for the province to be using the already existing staffing and requirements of the municipality as you move forward. I think we are a good model to be following.

The Chair: Further questions?

Mr Brownell: I come from a largely rural area of eastern Ontario, Cornwall. We've had very responsive municipal governments with the protection of our heritage. I was an activist down there myself before arriving on the scene here.

You talked about the cost of advertising. Could you give me a little more information? Because I know that really hasn't been a problem down in our area.

Mr Rae: I think having to put an ad in the *Globe and Mail* or the *Toronto Star*—\$2,500 for an ad in the local papers, which are the *Globe*, the *Star* or the *Sun*. They can be very onerous, given the number of heritage properties we list and designate.

Mr Brownell: So, if I could just ask a supplementary, every time that you've gone to designate and whatnot, you've had these costs?

Mr Rae: That's right.

The Chair: Mr Racco, quickly.

Mr Racco: Someone suggested that a sign, just like the committee of adjustment, outside, in front of the

building, is acceptable. In your opinion, in Toronto, is that acceptable?

1210

Mr Rae: You're right that the current practice on planning applications is to put notification on the property. However, we do have community newspapers that are more reasonably priced in terms of advertising, that get large coverage across the city. Almost every neighbourhood has a community newspaper. If we were able to advertise at that level and that cost, it would be more affordable. But both suggestions might be useful.

Mr Racco: Thanks.

Mrs Munro: Thank you for coming and giving us a perspective here. On page 4, you're talking about the provincially prescribed designation criteria. I think this responds to criticisms we had heard about the fact that in individual communities there are different levels of expertise, in-house or in the community, and that sometimes something would be designated in one community that would never have been designated in another community. That's really the motive behind this. I appreciate your comment, though, in terms of the set of criteria and how can they be made to do the one size fits all. In defending the notion of the province creating that set of designation criteria as an assistance, would you think that if these were viewed in a manner similar to provincial policy statements in the planning process, for instance, that would give the kind of discretionary power you're looking for? I really feel that there is a need to have some kind of standards.

Mr Rae: I understand that. You're right. There will be some municipalities that will not designate a building that we would in Toronto, especially modern or industrial buildings. Some places will say, "That's ephemeral and we don't need that any more," whereas we are going out of our way in doing that.

I think it might be useful to have some guidelines from the provincial government, but you need to let municipalities be the masters of our communities and our neighbourhoods. There are going to be differences across the province, and I'm not sure one size fits all. I think there needs to be some latitude given. There are mitigating circumstances in each community in dealing with their heritage, their ability to do it or the ability of the owner to maintain.

I would welcome questions about how the churches are having difficulty dealing with this issue. In the municipality, we have an enormous complement of heritage buildings, and we need to find a way to give property owners a means of maintaining them, instead of hitting them over the head with increased taxes as they improve their heritage properties. We need a heritage tax incentive program and we need that now. We needed it five years ago. We asked for it five years ago but didn't get anywhere, and I'm hoping, with this government, we will.

The Chair: Mr Marchese, last question.

Mr Marchese: Thank you both; thank you, Kyle.

Mr Rae: Nice to see you.

Mr Marchese: On this one, I do agree with Julia. I'll explain briefly why and then make some other quick remark.

First of all, I don't think we should worry that the minister will be overly engaged in designating properties. But you and I both agree the ministry has been very negligent in terms of protecting its heritage. All of a sudden, we have a bill that says the minister has a stake in it. Am I going to take that away when, for all these years, we've never had any ministry involvement at all? So I'm very happy to see it there.

Mr Rae: You can always delegate to municipalities that interest from the minister. That's happened on many occasions. Our medical officer of health is delegated from the Ministry of Health, and we do a superb job in delivering public health.

Mr Marchese: Let's disagree briefly on that, because I wanted to say that my sense is this government wants to pass this bill this term, and so do we. But I suspect they won't introduce a lot of amendments tomorrow on clause-by-clause. That's my sense. Given that, of the amendments you proposed, which ones do you believe they could do tomorrow morning? The ones I'm going to be talking about are clearly the one that you spoke to as well, which is introducing a tax credit; protecting cemeteries with language in the bill; and the third one, allowing for third party interventions. I think they're doable. Are there others that you think they could do for tomorrow?

Mr Rae: I think the demolition is clear—

Interjection.

Mr Rae: That's a good point—the Conservation Review Board piece. There should be a member on the panel, if it's the OMB that's dealing with it.

Mr Marchese: I originally interpreted it as that being the case. I didn't realize it wasn't made. I agree with you.

Mr Rae: The city of Toronto has a long history of dealing with the province and the federal government, as they feel exempt from our development controls, from our official plan. There are properties on Jarvis Street developed by the federal government, which they abandoned 20 years later, that became crack alleys—the Jarvis RCMP building, also the building to the north, the Mulock building. They left them. They built them, they're eyesores, and they do not conform with our official plan or zoning bylaw.

We have a history of dealing with senior levels of government that feel they don't need to be compelled to live within the rules of the municipality. And I think, as partners, you should recognize that we're working together and not at cross purposes. I think this bill goes a long way to doing that.

The Chair: Thank you very much. That's all the time that we have today for your presentation. That concludes this morning's proceedings.

Mr Marchese: Mr Oraziotti, I have a motion. In the context of what we heard today, in the context of so many people having so many other suggestions and recommendations, I would like to propose that we move the clause-by-clause to next Wednesday so as to permit the parliamentary assistant and the minister to adequately review the changes that have been proposed. I move that.

The Chair: Any comments or discussion on the motion from either caucus?

Mrs Munro: I think that this particular motion is one that the government should give serious consideration to. We have heard from very significant players in the community who have not been consulted in this process. We've also heard some issues of ministerial co-operation to take place. For reasons such as that, I think it would be in fairness to the government, quite frankly, to support this motion and give due consideration to the complexity of the issues that have been brought before us.

Mr Marchese: David, just quickly. I have no interest in delaying this bill beyond this session. It would be my purpose, if we get the amendments, or many amendments that people have recommended, to make sure this legislation passes before the end of the session. That's my commitment to this, so they know.

The Chair: Government caucus.

Mr Brown: I really appreciate my good friend Rosario bringing forward this motion at this very, very, very late date. The subcommittee obviously ordered the business knowing what was about to happen. The subcommittee obviously understood that when the deputations were made, there would be difference of opinion, that there would be suggestions. I can commit to you that the government caucus will work very hard with the ministry to take into consideration all of the deputations that were made today and that we will be in a very good position tomorrow to be able to assimilate those into our thoughts.

We would think that perhaps the opposition could move forward just as rapidly to focus their minds on the various amendments that were suggested today and the various differences of opinion that, I think, we've heard today, and assimilate those and be ready to put their amendments in the morning.

The Chair: We have a motion on the floor from Mr Marchese that clause-by-clause be postponed until next Wednesday, December 8. Call for a vote.

Mr Racco: Can I speak—

The Chair: We've had one speaker from each caucus, Mr Racco. I think we're prepared to vote on that at this time.

All those in favour? Opposed? The motion is defeated.

The committee is adjourned until tomorrow morning at 10 am to consider clause-by-clause.

The committee adjourned at 1219.

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CONTENTS

Wednesday 1 December 2004

Ontario Heritage Amendment Act, 2004, Bill 60, <i>Mrs Meilleur</i> / Loi de 2004 modifiant la Loi sur le patrimoine de l'Ontario, projet de loi 60, <i>M^{me} Meilleur</i>	JP-385
Roman Catholic Archdiocese of Toronto	JP-385
Bishop Richard Grecco	
Mr Peter Lauwers	
Mr David Finnegan	
Ms Marcia Cuthbert.....	JP-387
Community Heritage Ontario.....	JP-389
Mr Paul King	
Mr Bob Saunders	
Brougham Pioneer Christian Cemetery Board	JP-391
Ms Anna Clapp	
Ontario Catholic School Trustees' Association	JP-393
Mr Bernard Murray	
Ms Carol Devine	
Urban Development Institute/Ontario	JP-395
Mr Neil Rodgers	
Mr Michael Stewart	
Ontario Heritage Foundation.....	JP-398
Hon Lincoln M. Alexander	
Mr Richard Moorehouse	
Old Durham Road Pioneer Cemetery Committee.....	JP-400
MsCarolynn Wilson	
Seventh Town Historical Society	JP-402
Mr Ian Reilly	
Ontario Genealogical Society	JP-405
Ms Marjorie Stuart	
Anglican, Baptist, Evangelical Lutheran, Presbyterian, Roman Catholic, and United Churches in Ontario.....	JP-407
Bishop Richard Smith	
Archdeacon Harry Huskins	
City of Toronto, Heritage Preservation Services	JP-409
Mr Kyle Rae	



JP-20

JP-20

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Jeudi 2 décembre 2004

Standing committee on justice policy

Ontario Heritage
Amendment Act, 2004

Comité permanent de la justice

Loi de 2004 modifiant la Loi
sur le patrimoine de l'Ontario

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 2 December 2004

Jeudi 2 décembre 2004

*The committee met at 1008 in room 151.*ONTARIO HERITAGE
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT LA LOI
SUR LE PATRIMOINE DE L'ONTARIO

Consideration of Bill 60, An Act to amend the Ontario Heritage Act / Projet de loi 60, Loi modifiant la Loi sur le patrimoine de l'Ontario.

The Vice-Chair (Mr Bob Delaney): Good morning, ladies and gentlemen. Welcome to the standing committee on justice policy. Today we're going to be considering Bill 60, An Act to amend the Ontario Heritage Act. Before you, everyone should have a copy of the agenda, a copy of the bill, a summary of the recommendations on Bill 60 and some late submissions that were not received in time to be included in that summary.

Are there comments, questions or amendments to any section of the bill, and if so, to which section?

Mrs Julia Munro (York North): I would like to move the following motion:

That this committee defer its clause-by-clause consideration of Bill 60 until such time as the ministry has addressed the concerns of churches, cemeteries and schools and provided a balance to the bill by including within it incentive to property owners.

The Vice-Chair: Are there any questions and comments?

Mrs Munro: I think the fact that we have had a bill put before us that has raised concerns among significant stakeholders, particularly the depositions that we've heard with regard to the churches and the schools, who have pointed out the limitations of the process that is currently in this bill with regard to their only option being an OMB hearing—obviously, the OMB hearing would be geared, as I understand the legislation, to be looking at the terms of the designation. I think representatives of both these institutions raise the issue that theirs is not with the question of designation. It's a question, then, of the implications of that designation and, frankly, their inability to support financially the kind of obligations and also the limitations that their properties have in terms of being used for other purposes. So it would be my submission that the ministry needs some time to look at that particularly important issue.

The cemeteries issue was again raised by many people within the province who brought forward specific examples of the limitations of the current legislation to protect cemeteries.

Finally, we have the whole area that heritage preservation must meet a balance between the public interest and the private. We've certainly heard depositions which demonstrate the limitations of this bill in that regard.

Ms Andrea Horwath (Hamilton East): I don't disagree with the comments raised by Ms Munro; I understand there has been some considerable concern raised.

However, I believe some of the amendments that have been put, certainly by the NDP, which we'll be discussing today if we move forward, are being asked to be put in place by our party to cover off some of those issues around cemeteries, around third-party intervention in the OMB hearings, or at least third-party access to that, as well as some of the other concerns raised.

So I hope, as we go through the clause-by-clause today, the government members who are in committee will see an opportunity to make some of those changes in this very forum by accepting some of the recommended amendments that we're bringing forward.

Ms Jennifer F. Mossop (Stoney Creek): We feel quite comfortable in proceeding today.

The Vice-Chair: OK. We'll now put the question. Those in favour of Ms Munro's motion?

Mrs Munro: Recorded vote.

Ayes

Munro.

Nays

Brown, Brownell, Horwath, Hoy, Mossop.

The Vice-Chair: I declare the motion defeated. Shall we proceed to the actual clause-by-clause?

Section 1: There have been no amendments put forth. Shall section 1 carry? Carried.

Section 2: Are there comments and questions on section 2?

Ms Mossop: I move that section 2 of the bill be amended by adding the following subsection:

"(1.1) The definition of 'heritage attributes' in section 1 of the act, as enacted by the Statutes of Ontario, 2002,

chapter 18, schedule F, section 2, is repealed and the following substituted:

“‘heritage attributes’ means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest.”

The Vice-Chair: Comments and questions?

Mrs Munro: I just wondered if we could have a further explanation with regard to the question of the attributes of the property. How would that be different from what we would have understood in the previous legislation?

Ms Mossop: What we’re attempting to do with this piece is to clarify and ensure that the definition of “heritage attributes” is applicable to the use of the term in part V of the act with reference to heritage conservation districts and not just to properties that have been designated individually under part IV.

The Vice-Chair: Any other questions and comments? The motion has been made to amend subsection (1.1). Shall the amendment carry? Carried.

Shall section 2, as amended, carry? Carried.

There have been no amendments proposed for sections 3 through 12. Shall sections 3 through 12 of the bill carry? Carried.

Section 13: questions and comments?

Mrs Munro: I move that the title to part III.1 of the act, as set out in section 13 of the bill, be struck out and the following substituted:

“Part III.1

“Standards and guidelines for provincial heritage properties and other specified properties.”

The Vice-Chair: Questions and comments?

Mrs Munro: The idea here is dealing with a later subsection, where the province has the right to list areas, or by a public body. This would simply allow that to take place.

The Vice-Chair: Questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Section 13: Questions and comments?

Mrs Munro: I move that subsection 25.2(2) of the act, as set out in section 13 of the bill, be struck out and the following substituted:

“Application

“(2) This part applies to,

“(a) property that is,

“(i) owned by the crown in right of Ontario or by a prescribed public body, or

“(ii) occupied by a ministry or a prescribed public body if the terms of the occupancy agreement are such that the ministry or public body is entitled to make the alterations to the property that may be required under the heritage standards and guidelines approved under subsection (5);

“(b) property on which a church, temple, synagogue or other prescribed religious building is situated; and

“(c) property on which is situated a building that is used as a school within the meaning of subsection 1(1) of the Education Act.”

The Vice-Chair: Questions and comments?

Mrs Munro: This is an attempt to give some recognition to those particular groups who felt left out of the act and the consultation process. It’s an attempt to bring them into the act, specifically through the right of the province.

The Vice-Chair: Questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Section 13: Questions and comments?

Ms Mossop: I move that section 13 of the bill be amended by adding the following section to part III.1 of the act:

“Application

“25.3 Section 37 applies with necessary modifications to property to which this part applies.”

The Vice-Chair: Questions and comments? Seeing none, I’ll put the question. Those in favour? Opposed? I declare the motion carried.

1020

Shall section 13, as amended, carry? Carried.

Section 13.1: questions and comments?

Mrs Munro: I move that the bill be amended by adding the following section:

“13.1 The act is amended by adding the following part:

“Part III.2

“Standards relating to cemeteries and burial grounds

“Standards for cemeteries and burial grounds

“25.3 (1) The minister shall prepare standards relating to the preservation and maintenance of the cultural heritage value or interest that exists in cemeteries and burial grounds that meet the prescribed criteria.

“Consultation

“(2) In preparing the standards referred to in subsection (1), the minister shall consult with the affected ministries, the trust and with the owners of the affected cemeteries and burial grounds.

“Approval

“(3) The standards prepared by the minister shall be approved by the Lieutenant Governor in Council.

“Compliance

“(4) The owner of a cemetery or burial ground to which the standards apply shall comply with the standards approved under subsection (3).

“Not a regulation

“(5) The standards approved under subsection (3) are not regulations within the meaning of the Regulations Act.”

The Vice-Chair: Questions and comments?

Mrs Munro: This amendment is put forward to address some of the concerns for greater understanding and consultation within this proposed act. It’s also with the idea that it would make very clear the protection, obviously, so that we’re not looking at groups within the heritage community putting out their volunteer dollars

and time to protect these in the processes we have heard of. I really think if we're looking at heritage—and everyone who has come forward has talked about how badly this bill needs to be updated, how far behind we are as a jurisdiction in this area. So the notion that we are going to leave out a significant part of the heritage of the province seems to me something that needs to be addressed.

Ms Mossop: This is an area of particular concern for us. We've been wrestling with this, because many people on the government side have a tremendous concern about this issue and about cemeteries as well. I've been discussing it with the staff—you know, the legal issue—and we're trying to find a meaningful way, a way that will actually address the concerns of the people and not just provide window dressing. My understanding is that at the moment, in the Heritage Act, cemeteries and burial grounds are covered, because we are talking about real property. In fact, under the act, 140 cemeteries are already designated by municipalities.

It seems that what is wanted here is for all cemeteries and burial grounds to be designated, which is a different issue. What happens is, we then come up against the Cemeteries Act, and in fact the Cemeteries Act would trump our legislation. So to put the term "cemeteries" in our legislation would be misleading to the people who want their cemeteries protected, because it would not lead to that. It would also lead to another potential problem, which is that if we try to start defining "real property," we may get into a situation of omissions. So where does the list end of going on and on and listing everything?

We're trying to find the best way of approaching this, because this legislation and the proposed amendments will not provide the solution we're after. What we have done is, our ministry staff have undertaken to work with the staff at consumer and business services on the regulations of the incoming Cemeteries Act, which has received royal assent but has yet to be proclaimed until the regulations are sorted out. Our minister has undertaken to work with Minister Watson on this issue, and I've spoken to Minister Watson directly to let him know that this is a very big concern.

To put the word "cemeteries" in will not do anything. It will be window dressing and in fact it may actually cause more problems. So we will not be solving the problem and may create more. We want to do something that is real and meaningful here for you and not just mislead you that, "Oh, well, we've put the term 'cemeteries' in; we've looked after your concerns," because in fact that won't be the case.

The other thing we have undertaken to do is to make sure we have very clear guidelines that will go out to the municipalities, to make it clear that cemeteries are included in real property and that they can be designated and protected under this act.

Mrs Munro: Certainly I appreciate the commitment you have made here today on this issue. I guess when I look at this amendment, it is enabling. It says, "Please consult." It doesn't put you in any kind of restriction in

terms of what might come out of that. It asks you to create standards. It asks you to consult. It mentions the affected ministries, because we all understand the jurisdictional issue, and obviously it's asking you, then, to undertake a consultation. I think it doesn't in any way set out the limitations of that consultation or the parameters of it; it merely puts in writing your commitment to do so.

I would just suggest to you that what you have told us you plan on doing is essentially what this amendment asks you to do.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): I would like to make comment on this. I have a great passion for cemeteries, having lived in eastern Ontario and lost many of our cemeteries through a flood in 1958. Many people can't go to those cemeteries and burial grounds where their ancestors were buried, as I can't. My great-great-grandfather served here in York, in 1808, in the Legislature, in the fifth Parliament of Upper Canada. I cannot go to that site.

I have had to wrestle with this issue and with the people who have come in. I see people sitting back here today who have come in, made presentations, getting information from Dennis Carter-Edwards, chair of the Heritage Cornwall board, regarding this issue. When I looked at this, I thought, "Something has to be done with regard to cemeteries." I had a dialogue with the parliamentary assistant to the minister, and hearing that Minister Watson, the Minister of Consumer and Business Services, will be looking at this, I am certainly going to look that we keep our feet to the fire and that we work with that ministry, with our ministry and with the people who have made presentations here today.

We have the documentation. We have all the documents in the world that say, "Yes, something has to be done." When we read in here that roads and laneways are being constructed over burial grounds and sacred grounds, we have to do something. I know that as long as I'm here, I'm going to be fighting for this. But if we see and hear that the Cemeteries Act takes precedence over what may be included in this bill, then as this justice committee and this Ministry of Culture, let's work with the Ministry of Consumer and Business Services to get something that has real meaning, real teeth to it, and that we have the best we can to protect what those people who sit back here want to protect, and that is the burial grounds and the cemeteries of our province.

Ms Horwath: I agree with all of the comments made so far in regard to how important it is to make sure this area is covered off. I understand that the committee heard loudly and clearly from people who are heritage preservationists in many communities across the province that they want this cemeteries issue to be dealt with.

As you'll know, if you're looking through the package, I have a further recommendation on how to get that done, so I won't be supporting this particular motion. I'll be putting one forward from the NDP in the same vein.

1030

Mrs Munro: I don't want to drag this out unduly, but I would just suggest to the government members that it

would not be something extraordinary to pass enabling legislation. Essentially all this amendment does is give the government some opportunity within the legislation to move forward on an issue that appears to have struck the hearts of people around the table.

The Vice-Chair: Further debate? Shall section 13.1 carry? In favour? Opposed? I declare the section lost.

Section 14: questions and comments?

Ms Horwath: I move that the definition of "designated property" in subsection 26(2) of the act, as set out in section 14 of the bill, be struck out and the following substituted:

"designated property" means property designated by a municipality under section 29 or deemed to have been designated by a municipality under section 29.1."

Just as a bit of information, this particular motion sets up the opportunity to then reopen the issue of cemeteries in another section of the bill, and that would be section 17.1.

What we're hoping to do then is cover off the issue of having cemeteries designated by deeming them to be heritage properties. So we need first to amend this section that changes the definition of a designated property to include properties that will have been deemed to have been designated, and then, later on in the bill, I'll be introducing the amendment to try to have the existing cemeteries deemed to be designated, and there are some specifics around that.

Again, this is a way to deal with the cemeteries issue in a way that, when the act is brought into force, all the cemeteries in Ontario will be deemed to have been designated, and then there are some particulars around the time frames of how that gets done, as well as covering off how various other acts are being affected by that.

This motion is simply to get the language changed, in terms of designated property, to include "deemed", and then we will continue on; I think the next motion will be on page 9 of the package in front of the members.

Ms Mossop: I'm wondering if we can stand this down until we deal with the other section, if that would be appropriate.

The Vice-Chair: We'll move to section 14. Questions and comments?

Ms Mossop: I move that section 26.1 of the act, as set out in section 14 of the bill, be struck out and the following substituted:

"Application

"26.1(1) This part does not apply to property described in clause 25.2(2)(a).

"Conflict

"(2) If a property described in clause 25.2(2)(b) is designated under section 29 or under section 34.5, and if there is a conflict between a provision of the heritage standards and guidelines prepared under part III.1 and a provision in part IV as they apply to that property, the provision in part IV prevails.

"Exception

"(3) Nothing in subsection (1) shall prevent a municipality acting under subsection 27(1.2) from including in the register referred to in that subsection a reference to property described in clause 25.2(2)(a)."

The Vice-Chair: Questions and comments?

Mrs Munro: Yes, I have a question. If I understand this properly, does this mean that the municipality would prevail over the province in designations?

Ms Mossop: That is not the understanding that I have. May I call on some technical response to that?

Mrs Munro: Absolutely.

The Vice-Chair: Would you please, for the purposes of Hansard, identify yourselves and then address the topic.

Mr Dan Schneider: I'm Dan Schneider, senior policy adviser with the Ministry of Culture.

Mr Dana Hall: I'm Dana Hall, legal counsel with the Ministry of Culture.

Mr Schneider: The intention with this amendment is to correct a provision in the bill that would mean that property occupied by the crown but not owned by the crown could not be designated by the municipality. We think that if the crown is simply leasing property, it should be subject to designation, because at any point they could move out.

Mrs Munro: OK. That's all the clarification I was looking for. Thank you.

The Vice-Chair: Further debate? I'll call the question: Shall the amendment carry? Carried.

Ms Horwath, do you wish to consider your amendment at this time or come back later?

Ms Horwath: I'm in your hands, Mr Chairman, in terms of the process, but I think there's another government motion.

The Vice-Chair: We'll return to that one after section 15, then. Considering section 15: questions and comments?

Ms Mossop: I move that subsection 27(1.3) of the act, as set out in section 15 of the bill, be amended by striking out "including a property that has not been designated under this part in the register under subsection (1.2)" and substituting "including a property that has not been designated under this part in the register under subsection (1.2) or removing the reference to such a property from the register."

The Vice-Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 15, as amended, carry? Carried.

To return to section 14 to deal with Ms Horwath's amendment—

Interjections.

The Vice-Chair: Before doing that, there are no amendments proposed to sections 16 and 17. Let's take them one at a time.

Section 16: Shall section 16 carry? Carried.

Section 17: questions and comments?

1040

Ms Horwath: I move that the bill be amended by adding the following section:

"17.1 The act is amended by adding the following section:

"Deemed designation of cemeteries

"29.1(1) On the day this section comes into force, every cemetery situated in a municipality shall be deemed to have been designated as property of cultural heritage value or interest by the council of the municipality in accordance with section 29 and sections 33, 34, 34.1 and 34.2 apply to the property on which the cemetery is situated with necessary modifications.

"Registry

"(2) On or before the day that is 30 days after the day this section comes into force, the council of a municipality in which a cemetery is situated shall amend the register referred to in section 27 by adding to the register a reference to the cemetery and including the information that is required under section 27.

"Non-application

"(3) Sections 31 and 32 do not apply with respect to cemeteries that are deemed to have been designated under subsection (1).

"Definition

"(4) In this section,

"'cemetery' means any land set aside to be used for the lawful interment of human remains.

"Transition

"(5) A reference to sections 83 to 89 of the Funeral, Burial and Cremation Services Act, 2002 in subsection (4) shall be deemed to be a reference to sections 2 to 7 of the Cemeteries Act (Revised) until the day sections 83 to 89 of the Funeral, Burial and Cremation Services Act, 2002 come into force."

The Vice-Chair: The clerk informs me I got one step ahead of myself. Before adding a new section, that being section 17.1, we should carry section 17, in which there have been no proposed amendments.

Shall section 17 carry? Carried.

Addition of section 17.1: questions and comments?

Ms Horwath: Thank you for your indulgence. My understanding is that, in the motion I've just read—am I to read it again? Is that what you want me to do?

The Vice-Chair: No. We have it on the record.

Ms Horwath: OK. But I'd like to amend it, actually, to omit the last section, which is the section that refers to "transition." My understanding is that it's not necessary, that it's not necessary for it to be part of this motion.

The Vice-Chair: So you're proposing deleting the section that says "Transition"?

Ms Horwath: Yes. So my motion would be just the balance.

The Vice-Chair: So your motion, then, concludes with the definition of "cemetery."

Ms Horwath: That's right.

The Vice-Chair: OK. Ms Horwath has proposed an amendment to her amendment. Shall the amendment to the amendment—not the amendment itself but the amendment to the amendment—carry? Carried.

Ms Horwath?

Ms Horwath: Again, this is the language that we think will do the appropriate thing in regard to cemeteries. I think all of the parties at committee when the hearings were taking place were very well informed by the community and by people concerned about heritage designation in communities.

I live in a heritage home myself, so I know very well how important these particular issues are and how passionate people are about heritage properties. In the city that I come from, we actually have walking tours of our cemeteries that are built in with historical information. They're a way of not only bringing our community to a point where it's valuing and respecting the heritage value of the cemeteries, but also providing opportunities for people to learn about the history of our city as well as the people who were active in making that history occur.

I would recommend that the government seriously consider this amendment as a way of including cemeteries in the bill. That way, we all know here at committee that it's not something that will happen in the future, but in fact it's something that can be addressed immediately. Then, at the end of the proceedings today, once we've completed clause-by-clause, everyone will know that the cemetery issue has been dealt with in a way that ensures that they're deemed to be heritage properties—and, again, the process of ensuring that they are then put into the registry—and that they are dealt with appropriately by municipalities across the province.

Mr Michael A. Brown (Algoma-Manitoulin): We on the government side certainly appreciate the thought behind this amendment and have a great deal of sympathy. The argument has been made by the government that these properties are included and can be included for designation by municipalities. We have a problem, in that I think we're trying to deal with this problem—which we all agree needs to be dealt with—in the wrong act. It needs to be dealt with in the Cemeteries Act.

I would point out to my friend across from me that the definition of a cemetery in the Cemeteries Act is different. In the Cemeteries Act, a cemetery means "land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains." So we have a problem right off the top, in that the two definitions are not the same.

I would suggest that we all want to work together to resolve this particular situation, but I think in some ways this would make the situation not better, but worse.

Ms Mossop: I want to make it very clear that I think we're all on the same page in terms of the goal here and the sentiment that's behind this. This is a pretty emotional issue. More than even real property, this is about families. This is about people. The property in which our families are buried is covered by this act at the moment. I think what we're looking for is something that has to be changed elsewhere. We have wrestled with it in a very real way. As I say, what we want to do is something real and meaningful and not just provide window dressing

and send these people away thinking that we've solved the problem, when we haven't.

You've heard from some of our members the passion with which they speak on this issue. I actually back on to a very old cemetery; and not to be flippant about it, but I consider them very good neighbours, in addition to it being very picturesque. I'd hate to see those neighbours go away.

I think, at this point, it might be helpful if we do call on some technical advice on this, so that you understand that we have done due diligence in this area and are really trying to come up with the most effective and real solution to this problem. They can explain to us the conflict that we're coming up against with the Cemeteries Act, and that that is actually going to trump anything we try to do here. So we need to work there.

The Vice-Chair: Once again, just identify yourselves for Hansard.

Mr Schneider: I'm Dan Schneider, senior policy adviser with the Ministry of Culture.

Mr Hall: I'm Dana Hall, legal counsel with the Ministry of Culture.

The issue here is the relationship between designation of cemeteries under the Heritage Act and the closure provisions of cemeteries under the Cemeteries Act. It's our view, having looked at the provisions of the existing act and the bill that's before the committee, as well as the motions to amend, that all these approaches don't deal with the fundamental issue, which is what we feel is the legal precedence that the Cemeteries Act closure provisions would take over the heritage designation of cemeteries under the Heritage Act. We feel that the appropriate way to deal with this from a policy point of view is to work with the ministry to integrate the two interests so that there's a comprehensive scheme and conflicts aren't created between heritage designation and the provisions in the Cemeteries Act.

1050

Ms Horwath: Just for clarification again, what's being suggested is that the closure provisions of the Cemeteries Act take precedence over the Ontario Heritage Act.

Mr Hall: We're of the view that the closure provisions of the Cemeteries Act would take precedence over the designation of a cemetery under the Ontario Heritage Act.

Ms Horwath: Why would that be the case?

Mr Hall: Because we feel the legislation is more specific in terms of the subject matter and, given normal statutory construction, the Cemeteries Act would take precedence. In any event, there would be an ambiguity, and we feel that the ambiguity should be resolved in an appropriate manner, not through new legislation creating further ambiguities.

Ms Horwath: Since they're here, can I just ask one other question? So it's not appropriate to narrow the definition of "cemetery" in the resolution I put forward? Having that narrow definition in this bill doesn't cover off that issue?

Mr Hall: I don't think it assists the matter, Ms Horwath. I think it may create the impression that the issue is being dealt with. I think it continues an ambiguity that has to be dealt with through an integration of the Cemeteries Act with the Ontario Heritage Act.

Mrs Munro: I appreciate this explanation that you've provided for us. I guess my question is, at the beginning of the hearings we kept hearing that because there was a definition of real property, that allowed for security, if you like, of the whole issue around cemeteries. Yet what you're telling us today is that if there is a problem, for lack of a better word, then the Cemeteries Act would take precedence over the Ontario Heritage Act. So I'm somewhat confused about the fact that we seem to have a mixed message here.

Mr Hall: The bill doesn't come to grips with this conflict. The conflict, quite frankly, was not in the forefront of our minds when we were preparing the bill. It's not part of our policy instructions. It's clear now that there is an issue, and we're aware of the issue, but when the bill was being drafted, it was not part of our policy considerations.

Mrs Munro: I think that's very important for us to understand. In looking at changes, this amendment before us today talks specifically about cemeteries and provides us with a definition here. But I wonder if, in your consideration, you would be looking at areas that can best be described as burial grounds, given the informality of burial customs 100 or 150 years ago—things like that. Those, obviously, from a heritage point of view, are just as important as ones with little fences and—

Mr Hall: I think the concern is with the interment of human remains generally, and that the policy parameter would not be confined to cemeteries but would be looking at all heritage burial grounds and cemeteries.

Ms Mossop: I just want to comment that I think it became more and more evident as we went along, too, that what was wanted was something that would provide something more concrete that we can't deliver here. It's not possible for us to deliver it here. That's why we delved further and further into this, to see how we could accomplish it in a more realistic way.

The Vice-Chair: Further debate? Shall the amendment, as amended, carry? Those in favour? Opposed? I declare the amendment lost.

Shall section 17.1, as amended, carry? In favour? Opposed? I declare section 17.1, as amended, lost.

Reverting back, then, to section 14: Ms Horwath has proposed an amendment to subsection 26(2) of the act. Shall the amendment carry?

Ms Horwath: Mr Chairman, considering the fact that the main motion in the further section that we just dealt with didn't pass, I might as well withdraw that other motion completely.

The Vice-Chair: OK. Shall section 14, as amended, carry? Carried.

There are no proposed amendments to section 18. Shall section 18 carry? Carried.

Section 19: questions and comments?

Ms Mossop: I'll get my reading voice on here; this is a long one.

I move that section 30.1 of the act, as set out in section 19 of the bill, be struck out and the following substituted:

"Amendment of designating bylaw

"30.1(1) The council of a municipality may, by bylaw, amend a bylaw designating property made under section 29 and section 29 applies with necessary modifications to an amending bylaw as though it were a bylaw to designate property under that section.

"Exception

"(2) Despite subsection (1), subsections 29(1) to (6) do not apply to an amending bylaw if the purpose of the amendment is,

"(a) to clarify or correct the statement explaining the property's cultural heritage value or interest or the description of the property's heritage attributes;

"(b) to correct the legal description of the property; or

"(c) to otherwise revise the language of the bylaw to make it consistent with the requirements of this act or the regulations.

"Same

"(3) If the council of a municipality proposes to make an amendment described in subsection (2), the council shall give the owner of the designated property written notice of the proposed amendment in accordance with subsection (4).

"Content of notice

"(4) A notice of a proposed amendment shall,

"(a) contain an explanation of the purpose and effect of the proposed amendment; and

"(b) inform the owner of the right to object to the proposed amendment by filing a notice of objection with the clerk of the municipality within 30 days of receiving the notice.

"Consultation with committee

"(5) The council of a municipality shall consult with its municipal heritage committee, if one has been established, before giving notice of a proposed amendment to the owner of property under subsection (3).

"Objection

"(6) The owner of a property who receives notice of a proposed amendment from a municipality under subsection (3) may, within 30 days of receiving notice of the amendment, file a notice of objection to the amendment with the clerk of the municipality setting out the reasons for the objection and all relevant facts.

"Where no objection

"(7) If no notice of objection is filed within the 30-day period under subsection (6), the council of the municipality may pass the proposed amending bylaw described in subsection (2).

"Application of section 29

"(8) If the owner of the property files a notice of objection under subsection (5) in relation to a proposed amendment described in subsection (2), subsections 29(7) to (15) apply with necessary modifications to the notice of objection.

"Notice of amendment

"(9) The clerk of a municipality shall provide a copy of the bylaw, as amended under this section, to the owner of the property and to the trust and shall register the bylaw against the property in the proper land registry office.

"Requirement to update old bylaws

"(10) If the council of a municipality proposes to amend a bylaw designating property made under section 29 before the day the Ontario Heritage Amendment Act, 2004 received royal assent, the council shall include in the amendment such changes as are necessary to ensure that the bylaw satisfies the requirements of section 29, as it read on the day the Ontario Heritage Amendment Act, 2004 received royal assent."

Mrs Munro: Just one little question: With regard to (10), where it says "under section 29 before the day," does that mean literally one day? What does "before the day" mean?

Ms Mossop: I'm going to refer that, as a technicality, to our technical staff.

Mrs Munro: I think it is too.

Ms Sibylle Filion: The answer to that would be, any day before the day. So it could be at any time before the day the act comes into force.

Ms Mossop: Any day prior to—including one day before—

Ms Filion: Royal assent. That's right.

1100

Mrs Munro: I just wondered, from a practical point of view, how far back before the royal assent would the council be obligated to make—

Ms Filion: I'm sorry; this is only where there is a proposal to make an amendment before the day, not an amendment that would have been passed before the day. I don't know if that answers your question.

Mrs Munro: OK.

The Vice-Chair: Further debate? Shall we call the amendment? Shall the amendment carry? Carried.

Shall section 19, as amended, carry? Carried.

There have been no amendments proposed for sections 20, 21 and 22. Shall sections 20, 21 and 22 carry? Carried.

Section 23: questions and comments?

Mr Gilles Bisson (Timmins-James Bay): I move the following amendment.

I move that subsections 34.1(1), (2) and (4) of the act, as set out in section 23 of the bill, be struck out and the following substituted:

"Appeal to board

"34.1 (1) If the council of a municipality consents to an application subject to terms and conditions under subclause 34(2)(a)(i.1) or refuses an application under subclause 34(2)(a)(ii), any person who considers themselves aggrieved by the council's decision may appeal the decision to the board within 30 days of the day the decision is made.

"Notice of appeal

"(2) A person who considers themselves aggrieved by the decision of the council of a municipality shall, within

30 days of the day the decision is made, give notice of appeal to the board and to the clerk of the municipality.”

“Hearing

“(4) Upon receiving notice of an appeal, the board shall set a time and place for hearing the appeal and give notice of the hearing to the person who is appealing the decision and to such other persons or bodies as the board may determine.”

The Vice-Chair: Questions and comments?

Mr Bisson: I think it’s pretty straightforward. Mr Marchese has spoken to this at some length.

Laughter.

Mr Bisson: What are you guys laughing at? It’s pretty straightforward.

Mr Pat Hoy (Chatham-Kent Essex): I thought so.

Mr Bisson: I think it’s pretty straightforward. We all know the animal that we go against when trying as citizens to move forward on decisions at the Ontario Municipal Board. It’s not an easy thing to do, as many of you know. You’ve dealt with this in municipal councils, and as provincial members, I’m sure. It’s an attempt to try to facilitate to a certain extent the ability of the person who is in disagreement with the designation of the heritage site so they are able to get to the board. It’s a little bit more user-friendly, is the way I would view it.

Ms Mossop: I appreciate the intent of the amendment and I understand where he’s coming from. Again, we get into a bit of a hornet’s nest.

This bill is to give the kinds of protections and powers that have been lacking in the past, with the amendments that are proposed. If we get into a situation where you’re having, at the last minute, after something has gone through various appeals, to then have a party jump in, after due diligence has been done, with the extra protections provided in these amendments, we could get into more aggrieved parties than just one, and the aggrieved party situation may go on and on.

Mr Bisson: That would not necessarily be a bad thing, to an extent. We’ve all gone through these debates. I guess what Mr Marchese was trying to get at—and I appreciate what the parliamentary assistant is saying. We do end up in a situation where you have the person or the organization that owns the building, you have the position of the municipal council, and then you have third parties that get involved because they’re the ones that are, in some cases, pushing that the building be protected as a heritage building. I think that’s an attempt to get there. My question is, are you guys willing to support it?

Ms Mossop: My sense, especially when it comes to municipal councils, is that they are, like many politicians, vulnerable to public pressure. If there is public pressure—

Mr Bisson: That’s a good thing in democracy.

Ms Mossop: It’s a good thing in democracy.

Because we’re giving the municipal councils the extra powers to protect these buildings, I have a lot of concerns as to where this might lead. I think the whole intent of our amendments addresses that situation in that this is an

extra layer that might actually cause more difficulty, in fact, than help, although I know that the intent is absolutely valid and honourable.

Mr Bisson: Listen, I’m not going to hold up the debate the whole morning on this. But I know, in talking to Mr Marchese about it, the way I understand it is that we often get into—I don’t want to say heated debates; that’s probably not the right term—some controversy when it comes to heritage buildings. We know there are always two sides to that issue. Those people who happen to be third parties have real difficulty, sometimes, trying to make an impact on the decision one way or another. This was an attempt to deal with that.

I guess the only point I would make, and the government has to decide by way of their vote afterward: Is it necessarily a bad thing to allow a third party? If it does slow it down a bit, maybe it gives us an opportunity, at the Ontario Municipal Board, to be able to look at whether designation is a good thing or a bad thing.

I’ve been on both sides of this, as we all have, where a building in our riding or our own community, when we were on municipal council, was being pushed to be designated. It may not be the majority view of council or the majority view of the community, and vice versa, and who am I to say that’s right or wrong? I don’t think that having an extra step in there—although it will slow things down a bit, there’s no question; I don’t argue that for a second. It may be the sober second thought, to a certain extent, that we need to bring information to the board to hopefully make a good decision.

Ms Mossop: My concern is not really the slowing-down portion of it. I really do feel that we’ve addressed the kinds of concerns he’s trying to get at within this bill.

The Vice-Chair: Shall the amendment carry?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost.

Shall section 23 carry? Carried.

There have been no amendments proposed for sections 24 and 25. Shall sections 24 and 25 carry? Carried.

Section 26: questions and comments?

Mrs Munro: I move that subsection 34.5(1) of the Ontario Heritage Act, as set out in section 26 of the bill, be amended by striking out “After consultation with the Trust” and substituting “After consultation with the Trust and with the approval of the Lieutenant Governor in Council.”

This amendment is proposed simply to allow a second sounding board in terms of decision-making in this particular bill. It’s really intended to do no more than that. Obviously, a minister is going to have the con-

fidence of the legislation and be able then to persuade the rest of the council to see the merits of decisions that are made under this bill, and that's what it does.

Ms Mossop: I suppose, to clarify: Actually, the wording of this exists in a number of other provinces, and it's fairly rare that there would be some kind of intervention. But if there is a need for some, the feeling is that it must be swift, and to add the extra step actually may slow it down. If you're trying to save something, that extra step might just slow things down enough to lose the game.

The Vice-Chair: Shall the amendment carry? In favour? Opposed? I declare the amendment lost.

Section 26: questions and comments?

1110

Mr Bisson: I have another amendment here.

I move that section 26 of the bill be amended by adding the following section to part IV of the act:

"Deemed designation of cemeteries

"34.5.1(1) On the day this section comes into force, every cemetery situated in a unorganized territory shall be deemed to have been designated as property of cultural heritage value or interest by the minister under subsection 34.5(1) and subsections 34.5(2) to (12) apply to the property on which the cemetery is situated with necessary modifications.

"Non-application

"(2) Sections 34.8 and 34.9 do not apply with respect to cemeteries that are deemed to have been designated under subsection (1).

"Definition

"(3) In this section,

"'cemetery' means any land set aside to be used for the lawful interment of human remains."

The rest of that—"Transition"—is not part of the amendment.

I'd be curious to see what the government has to say. Well, we know this has been somewhat hotly contested.

Ms Mossop: I know. Mr Bisson missed a rather lengthy conversation on this exact issue, in addition to bringing up the technical support and all the rest. So because we've dealt with this issue a few times already, and in an attempt to get at it in various ways, I'm going to give you the Coles Notes on it and we'll go from there.

Essentially, we all feel the same way on this one, and we've been doing due diligence over here to try to get to the real heart of the problem. As we delved more and more into it, we realized that what was wanted from many of the delegations that came here could not be achieved here, because anything we put in the Ontario Heritage Act will essentially be meaningless because it can be trumped by the Cemeteries Act.

Cemeteries are already covered and burial grounds are already covered, because they're real property, and there are 140 cemeteries in the province already designated under the Ontario Heritage Act. We were trying to get at this. Is this effective? If we put in the term "cemeteries," "burial grounds" or whatever, are we going to have

solved the problem? That was my question. The answer was no, because the Cemeteries Act will trump it.

So we need to deal with the Cemeteries Act. We can't do that at this table. However, we are going to have very specific guidelines going out with our legislation to make sure it's understood that cemeteries and burial grounds are covered under this act already, and always have been.

The new Cemeteries Act is coming down the pike; it's already received royal assent. It's yet to be proclaimed. They're working on the regulations. Our staff has an undertaking from the staff at the Ministry of Consumer and Business Services to work on the regulations.

Mr Bisson: Just a quick question: When did we do an amendment to the Cemeteries Act? Was it under the Tories?

Ms Mossop: I think that was all previously done.

Mr Bisson: What bill was it? It was one of the omnibus bills, right? I'm trying to remember.

Interjection.

Mr Bisson: It hasn't been proclaimed?

Ms Mossop: It hasn't been proclaimed yet. We're working on the regulations.

Mr Bisson: I didn't know that.

Ms Mossop: So we're in a position, before it is proclaimed, to work with the Ministry of Consumer and Business Services on the regulations portion of it.

The other thing we are doing, and our minister has undertaken, is to work with Minister Watson on this issue. I personally spoke to Minister Watson about this issue yesterday to explain to him the concerns and that we would like to be able to deal with it, but we know this isn't going to be meaningful. It will be window dressing if we do it here, and it actually could create other problems for us if we start to get into the situation where, "OK, now that we've defined that cemeteries are included, do we have to define everything?" And then do we get into a situation of omissions and arguments?

Real property is always covered; it has always been covered under this act. Our amendments will actually give more protection than has existed before, but if we want to really serve the people who are coming to us with their concerns, then we have to do it in the real way, and that's with the Cemeteries Act, and we're undertaking to do that politically and at the staff level as well.

Mr Mario G. Racco (Thornhill): You explained that an hour ago.

Ms Mossop: Yes, I know, but Mr Bisson wasn't there. That was the long Coles Notes.

Mr Bisson: I appreciate that.

Ms Mossop: We have had our technical staff and our legal staff give us the opinions on these.

Mr Bisson: I guess there are only a couple of things I would say. One is, it's not uncommon in any legislation to amend more than the legislation that you're actually dealing with. As members who have been here for a while know, quite often you'll do, let's say, a change to the Environmental Protection Act and all of a sudden within that act you'll make an amendment to the aggregate act. That approach is not uncommon in changing

legislation. So I just have a quick question to counsel: Would it be too late, at this point, to propose an amendment to the Cemeteries Act?

Ms Filion: An amendment to the Cemeteries Act would require unanimous consent.

Mr Bisson: Yes, that's what I'm saying. It's not spoken to in the original act. Unless that act was spoken to, you'd have to do it by UC, right? Are you prepared to give UC on an amendment to the Cemeteries Act?

Mr Brown: No.

Mr Bisson: Well, that would fix the problem, according to the parliamentary assistant.

Mr Brown: If you'd been following this debate, you'd realize that the Cemeteries Act is a very complex piece of legislation that I don't think we should be trying to amend in 30 seconds.

Mr Bisson: I don't propose that we do it in 30 seconds. I propose that we write a proper amendment that's supported by the government and that, if takes an extra day or two or we do it next week, it's not the end of the world. The reality is that we haven't yet proclaimed legislation from 2002 to deal with this. Waiting another week ain't going to make a difference. For those—

Mr Brown: That is precisely the point. The government is now reviewing the regulations under the Cemeteries Act. As we go forward with that review of the regulations, these matters will be considered. So I think that's the appropriate way, and I think if you reflected upon it, you'd understand that. This amendment you're talking about has been dealt with already, Mr Chair.

The Vice-Chair: Are there any more comments on the amendment?

Mr Bisson: Again, I don't want to lengthen the debate, but just for the record, yes, you're right, there has been a lot of comment on this particular issue within the bill. I know that most of you have been lobbied, because certainly I've been lobbied by church groups and others that are basically affected by this. All I'm suggesting is that if I take at face value what the parliamentary assistant says—and I'm not saying otherwise—that you need an amendment to the Cemeteries Act, I don't understand why taking an extra week to go back and do an amendment that fixes this problem to the satisfaction of those stakeholders that came to us would be the end of the world. I don't understand. If you're saying that we need to make an amendment to the Cemeteries Act, fine. Let's do that.

The Vice-Chair: Can we speak to the amendment before us here?

Mr Bisson: Yes. That's what we're doing.

Ms Mossop: A quick point of clarification: I didn't say that we needed to amend the Cemeteries Act. I said that we're working on the regulation portion of it, at this point, and with the minister.

Mr Bisson: All right. Let's just put it to a vote and deal with it that way.

First of all, I would ask for unanimous consent that we adjourn the committee for a week in order to deal with an amendment that amends the Cemeteries Act.

Mr Brown: No.

Mr Bisson: All right. That's on the record, the government saying no. So now we'll vote on the amendment.

The Vice-Chair: Mr Bisson has proposed an amendment to section 34.5.1 of section 26. Shall the amendment carry? All those in favour?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost. Section 26: Questions and comments?

Mrs Munro: I move that clause 34.6(5)(a) of the act, as set out in section 26 of the bill, be amended by striking out "shall" at the beginning and substituting "with the approval of the Lieutenant Governor in Council, shall."

I spoke a moment ago about the opportunity for fuller discussion by including the Lieutenant Governor in Council, as opposed to the minister. My comments obviously remain the same.

The Vice-Chair: Comments?

Mr Bisson: I just have a question to the mover of the motion: Just to understand the rationale, why would you want to do that?

Mrs Munro: The rationale that I proposed for the other amendment of this was simply to provide an opportunity for the minister, in this case, to be able to have the support of the entire cabinet in moving forward on particular parts of the act.

Mr Bisson: So not make it just so the minister—he or she—has the ultimate authority, but rather that you need in an order in council.

Mrs Munro: Yes.

The Vice-Chair: Further questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

1120

Shall section 26 carry? Carried.

There being no proposed amendments to section 27, shall section 27 carry? Carried.

Section 28: questions and comments?

Ms Mossop: I move that section 39.1.1 of the act, as set out in section 28 of the bill, be struck out and the following substituted:

"Application

"39.1.1 (1) This part does not apply to property described in clause 25.2(2)(a).

"Conflict

"(2) If a property described in clause 25.2(2)(b) is included in a heritage conservation study area designated under section 40.1 or in a heritage conservation district designated under section 41, and if there is a conflict between a provision of the heritage standards and guide-

lines prepared under part III.1 and a provision in part V as they apply to that property, the provision in part V prevails.”

Mr Bisson: Can you explain that to me, please?

Ms Mossop: Essentially, what we’re trying to do is to ensure that the designation of a property under part V of the act, the heritage conservation districts, would continue to apply to property occupied but not owned by the province or prescribed public bodies. Does that make sense?

Mr Bisson: So what’s the effect of that if the property owner is the province?

Ms Mossop: The intention, in excluding provincially owned or controlled property from the application of part V, was to avoid the overlap between the designation provisions of the act and the standards and guidelines for provincial property under part III.1. It’s a housekeeping thing.

Mr Bisson: I want to understand. It means to say that if there is a piece of property that would be privately owned and is moved by a municipal council to be one that should be protected as a heritage property, you can go through the process, but the province would not be subject to its own act, if I understand what this is all about.

Ms Mossop: No, I don’t think that is—

Mr Bisson: Can you explain it? Just so I’m clear here.

Ms Mossop: Let’s bring the technical support up here for you.

Mr Bisson: Could we call whoever from the ministry who could explain this?

Ms Mossop: Yes. He’s coming up.

Mr Bisson: This is why they pay you the big bucks.

Mr Hall: Dana Hall, senior legal counsel with the Ministry of Culture.

The bill, as it’s presently drafted—part V provisions with respect to heritage conservation districts would not apply (1) to property owned by the government or prescribed public body, and (2) to property occupied by the government or a ministry of the government and prescribed public body.

Mr Bisson: In a lease arrangement or—

Mr Hall: This cuts down the scope of that application. This clarifies that the non-application of part V provisions only applies to government-owned property. If the government occupies property under a lease in a heritage conservation district, the municipal designation bylaw would apply.

Mr Bisson: What is the practice now?

Mr Hall: Currently, the practice is—the law is that the designation provisions of the Heritage Act do not apply to the crown.

Mr Bisson: OK. I was right in my understanding.

The Vice-Chair: OK. Questions and comments?

Mr Bisson: Just as a citizen, never mind as a legislator: We do that far too often here in the Legislature. Far too often we pass laws such as the Employment Standards Act, and we say, “Well, it doesn’t apply to us here as legislators.” In this case here, we’re confirming

again in practice that we have a heritage policy for the rest of the province except for the people who write the laws, which is the province itself. That’s the effect of this clause and the effect of the current practice; right?

Mr Hall: The bill introduces part III—

Mr Bisson: No. We do that now. Let me back it up. As I understand the current law, if there is a property to be designated as a heritage property, provincially owned lands are not subject to that designation.

Mr Hall: Under the current Heritage Act that is correct.

Mr Bisson: And if the crown is leasing property, what would happen in that case? They would or they wouldn’t be, currently?

Mr Hall: The property owner, which is not the crown, would be subject to the designation.

Mr Bisson: And what this basically does is keep it in sync with the current practice.

Mr Hall: The bill introduces a provision, a part that provides for provincial standards and guidelines with respect to provincial government-owned properties.

Mr Bisson: So it puts the new act in sync with the current; right?

Mr Hall: It introduces a provision that provides for provincial standards and guidelines for provincially owned properties.

Mr Bisson: But the net effect is that currently, without this act, if the crown—which owns a lot of property in the province of Ontario, the last time I checked. If there is a heritage site, we’re not subject to that particular property being designated?

Mr Hall: That’s correct.

Mr Bisson: And that would still be the practice under this act?

Mr Hall: That is correct.

Mr Bisson: I’m just saying, isn’t it passing strange? Could the Parliamentary assistant comment on that, please?

Ms Mossop: I just wanted to clarify before you go away, did we not deal a few minutes ago with the crown leasing property?

Mr Hall: This is a companion motion to amend. The committee just dealt with, previously, a comparable motion to amend with respect to the application of part IV, designation of powers to crown-owned property.

Mr Bisson: Can you say that again? Sorry, I was—

Interjection.

Mr Hall: This is the companion motion to amend, with respect to part V.

Mr Bisson: I don’t mean to bother Mr Racco. If working on clause-by-clause is too troublesome for you, we could—

Mr Racco: No, it’s not. What bothers me, though, is that we had dealt with prior—

The Vice-Chair: Could you address your comments to the Chair, please?

Mr Racco: Do I have the floor?

The Vice-Chair: Yes.

Mr Racco: Just to answer his question: It's unfortunate that there are so many employees here who are waiting to go back to their offices, and the gentleman is asking questions that have been clarified. That's my concern. Otherwise, I don't have a problem. I think this committee should be a forum for discussion, but unfortunately such discussion has already taken place, and because you were late, we have to go over it. That concerns me.

Mr Bisson: I'd still like to have the answer. I really apologize if I want to be a legislator and I'm trying to do my job and it's bothering you. But if it is bothering you, you can leave and have lunch early. I won't mind at all. All right? Answer.

Ms Mossop: I'm trying to get you some clarification that you missed earlier.

Mr Bisson: I appreciate it. I just wanted to clarify for Mr Racco.

Ms Mossop: I want you to understand that—

Mr Bisson: Yes, I just want to understand.

The Vice-Chair: Could we bring the comments back to the amendment, please?

Mr Hall: There are two motions to amend that dealt with the application of part III.1, which makes provision for the creation of standards and guidelines that would apply to provincially owned properties and properties occupied by a ministry or public body of the government of Ontario.

The bill, as submitted, would have exempted the application of part IV designations and part V heritage conservation district designations from those properties. We thought that was overly broad, and we want to restrict it simply to provincially owned properties, not provincially occupied but not owned properties.

Ms Mossop: So, in fact, provincially occupied properties—that's different. Now we're giving the municipalities a greater ability to designate those properties, regardless of the fact that the province may be occupying them.

Mr Bisson: That's all I wanted to clearly understand. In the end, under the current regime, you can or can't do that?

Ms Mossop: You can't.

Mr Hall: Under the current regime, a municipality can designate a building—

Ms Mossop: We are moving forward.

Mr Bisson: So this further restricts the ability of the province to protect itself from its own act, which is not a bad thing, I'm just saying; right?

Mr Hall: I can't really comment on that.

Mr Bisson: Anyway, my point is not to fight with the parliamentary assistant.

Ms Mossop: I understand what you're trying to get at, and what we're trying to do is the same thing. We're getting there. We're inching toward it and trying to do it in a realistic way so that it'll actually happen instead of not happen. We understand the intent and the need for the province to lead by example. We're moving in that direction in a realistic, doable fashion.

Mr Bisson: I appreciate it. In fact, I'll vote in support of your amendment.

I always find it interesting, as we sit on committee and we look at legislation, that far too often the province exempts itself from its own legislation. I understand why sometimes.

Ms Mossop: But we're changing that. We're actually moving forward here.

Mr Bisson: You're moving forward. I'm not arguing that you're not. I'm just saying, it's always a bit passing strange—there are reasons why we may want to do that, but for the average person out there, they say, "Physician, heal thyself." That's the only point I'm making.

The Vice-Chair: Voting intentions having been made clear, are we ready to call the question on the amendment?

Mr Bisson: Excuse me. Is Mr Racco ready?

The Vice-Chair: Could you address the comments to the Chair, please?

Mr Bisson: I just wanted to make sure.

The Vice-Chair: On the proposed amendment, shall the amendment carry? Carried.

Shall section 28, as amended, carry? Carried.

There being no proposed amendments to sections 29 and 30, shall sections 29 and 30 carry? Carried.

Section 31: comments?

1130

Ms Mossop: I move that subsection 41.1(5) of the act, as set out in section 31 of the bill, be amended by adding the following clause:

"(a.1) a statement explaining the cultural heritage value or interest of the heritage conservation district;"

Mr Bisson: Rationale?

Ms Mossop: Oh, the rationale is that we're requiring a statement to be there. It's being made to reflect the distinction between why the district is being designated and what is being designated. It ensures consistency.

Mr Bisson: Was that a recommendation by leg counsel? I understand it, but I'm just wondering where it comes from.

Ms Mossop: We have the answer for you.

Interjection: Now, you get paid the big bucks.

Mr Schneider: The answer to the question is that in part IV, when you designate an individual property, the act requires that you provide a clear statement as to the cultural heritage value or interest. So this is really a consistency thing.

Mr Bisson: Got you.

Ms Mossop: Housekeeping again.

The Vice-Chair: Shall the amendment carry? Carried.

Shall section 31, as amended, carry? Carried.

There being no proposed amendments to sections 32 through 42, shall these sections carry? Carried.

Section 43: questions and comments?

Ms Mossop: I move that subsection 68.1(1) of the act, as set out in section 43 of the bill, be struck out and the following substituted:

"No rehearing by board, etc

“(1) Despite section 43 of the Ontario Municipal Board Act, the board shall not,

“(a) rehear any application made to it under this act, subject to subsection (1.1); or

“(b) review, rescind, change, alter or vary any decision, approval or order made by it under this act.

“Where rehearing allowed

“(1.1) The board may rehear an application made to it under this act if,

“(a) the application was first heard by a two-person panel; and

“(b) the two-person panel was unable to agree to a decision.”

Mr Bisson: Again, could the parliamentary assistant just give us a rationale?

Ms Mossop: The rationale is that this clarifies that rehearings on Ontario Heritage Act appeals are permitted where a two-person panel of the board does not render a unanimous decision; for example, where a panel consisting of members from the Conservation Review Board and the Ontario Municipal Board does not agree.

Mr Bisson: Under the current act, not under the proposed legislation, are you allowed a rehearing? There's no such thing as far as I know.

Ms Mossop: I'd better bring in the technical support again. They seem to satisfy you better than I do, so I'm going to bring them in right away.

Mr Bisson: I wasn't aware you could do this in the first place, that's why I'm asking the question. And if that's the case, why do we need that? I'm just curious.

Mr Hall: Under the current act, there are appeals to the OMB with respect to applications to alter properties in heritage conservation districts, and the general provisions under the Ontario Municipal Board Act would apply.

Mr Bisson: Are you allowed a rehearing? I didn't think you could.

Mr Hall: The act doesn't exclude them.

Mr Bisson: But you only do it as a judicial review though, right?

Mr Hall: No. It's the provisions of the Ontario Municipal Board Act that allow it to rehear and vary a decision.

Mr Bisson: Just so I understand—I'm sorry if I'm holding you up, Mr Racco—currently now, if there's a decision made by the OMB, are you allowed, yes or no, to have it brought back before the OMB? I didn't think you could.

Mr Hall: Yes, you can, under the OMB Act.

Mr Bisson: Oh, you can?

Mr Hall: Yes.

Mr Bisson: I thought you could only do that by judicial review if there was—

Mr Hall: There are rehearing provisions in the OMB Act, I think primarily to deal with its regulatory jurisdiction over municipalities; regulatory matters that come before the OMB as opposed to quasi-judicial matters that come before the OMB.

Mr Bisson: So you can take the very same case back to the OMB a second time if you lost it?

Mr Hall: My understanding is that the OMB will entertain a rehearing if the underlying facts have changed and there is new evidence.

Mr Bisson: That's right. So it's the same sort of standard as judicial reviews. You have to show that there has been an error or—

Mr Hall: I think in a rehearing it's a factual change, whereas in judicial review it would be an error of law.

Mr Bisson: OK.

Mrs Munro: I have a question. With the proposed amendment here, where it suggests “the application was first heard by a two-person panel,” this opens up the question—and I need clarification—what the final disposition was with regard to the cross-appointments from the Conservation Review Board. Are we now mandating those cross-appointments in this act?

Mr Hall: The bill before you provides that the OMB “may” appoint a member of the CRB to a panel hearing and appeal under the Ontario Heritage Act, but is not required to.

Mrs Munro: That's what I wanted clarified. Where we are suggesting that the board may rehear an application if it was first heard by a two-personal panel, one of those could be the cross-appointment or not?

Mr Hall: That is correct. A rehearing would only be permitted in a situation where the two-person panel did not agree to a decision. There would be no rehearing if there was a unanimous decision of the two-person panel.

Mrs Munro: Does this mean that the individual who is appearing before the board has no guarantee—whether that's a good thing or a bad thing doesn't matter—as to the composition of the panel?

Mr Hall: That is correct.

Mrs Munro: It seems to me, then, that there might be some prejudice built into the system. You have no control whether there will be somebody from the Conservation Review Board cross-appointed. Whether you want them there or not is not the issue; the issue is that you have no knowledge or option. I find that to be somewhat problematic. Is that the reason why you're saying “if the two-person panel is unable to make a decision”?

Mr Hall: This was brought to our attention by staff at the OMB as a remote possibility. The suggestion was made that we might want to address it. We were advised that in the history of the OMB there has never been a case where a two-person panel has never reached a unanimous decision.

Mr Bisson: There has never been?

Mr Hall: That's what we were advised.

Ms Mossop: In our deliberations on this, my understanding is that in the past you have expressed concern about there being sufficient expertise when these sorts of decisions were being made. This should go some distance in addressing that.

Mrs Munro: That's really why I wanted to have the discussion, because, yes, there was certainly some

concern raised about it. I just wanted to have it clarified in this amendment.

Mr Bisson: I have a further question. The net effect of this is to restrict further the ability for a rehearing from the current regime?

Mr Hall: That would be correct, yes.

Mr Bisson: Is that the intent of the government? I don't believe that would be. To the parliamentary assistant: I'm not quite sure that this is where you want to go.

Ms Mossop: I'm satisfied that we are putting expertise in place.

Mr Bisson: I hear you.

Ms Mossop: Decisions aren't being made without that.

Mr Bisson: This is where I'm coming from. You have good intentions in what you're trying to do here. Nobody argues that.

Ms Mossop: I understand.

Mr Bisson: But I would think that the government's net aim is not to further restrict the ability of the public to a rehearing if they should choose. I didn't think they were able to in the first place, but obviously I was wrong on that one. But if the net effect is to restrict the ability of the public or whoever is moving forward on the hearing to the OMB, why would you want to restrict it? I don't think you want to do that.

1140

Ms Mossop: I don't get the sense that that's—

Mr Bisson: Well, that's going to be the net effect. That's why I'm asking, why would you do it?

Ms Mossop: I don't get the sense that that is the net effect.

Mr Bisson: Last question to my friend here: What was your name again?

Mr Hall: It's Dana Hall.

Mr Bisson: Currently, under the rules of the Ontario Municipal Board, you can do a rehearing? Let me make sure I understand this before we vote on it.

Mr Hall: In the current act, there is an appeal to the OMB with respect to a request to make alterations to buildings in a heritage conservation district. That matter is appealed to the OMB. Under the current act, because these provisions in the OMB act with respect to rehearing a matter are not excluded, technically there is a possibility, if there were an appeal to the OMB and a decision were made, that the applicant could request a rehearing or further consideration of the matter after the OMB had considered it in the first instance.

Mr Bisson: So, as the person before the board who has gone to the hearing, my only option after this would be a judicial review. That would be my only option.

Mr Hall: That's correct. You would have had your hearing before the OMB, the OMB would have made a decision, and the effect of this amendment would be that the board could not further consider that decision except in the circumstance where they didn't make a decision because it was a split decision.

Mr Bisson: I'm not going to debate it ad infinitum. I think I've made my point. My point is, I don't think we should be restricting the rights of individuals to a rehearing.

The Vice-Chair: On those points being made, are we ready to call the question?

Mr Bisson: Yes.

The Vice-Chair: On the matter of the amendment, shall the amendment carry? All those in favour?

Mr Bisson: Of the amendment?

The Vice-Chair: Of the amendment. All those in favour? Opposed? Carried.

Shall section 43, as amended, carry? Carried.

OK, we're in the home stretch.

There being no proposed amendments to section 44, shall section 44 carry? Carried.

Section 44.1: questions and comments?

Mrs Munro: I move that the bill be amended by adding the following section:

"44.1 The act is amended by adding the following section:

"Review of act

"69.1 The minister shall undertake a comprehensive review of this act five years after it comes into force."

The Vice-Chair: Discussion?

Mrs Munro: There are two reasons that prompt me to consider providing this amendment today. One is the fact that when we look at the history of the Ontario Heritage Act, many of our deputants referred to the fact that there had been undertakings by governments of all political stripes that never made it into any kind of legislative changes. We had deputants who remarked about a 29-year span. Whether we're talking about increased public awareness, whether we're talking about new technologies, making an understanding of heritage more important, it seems to me that five years is a reasonable length of time by which to undertake and have a commitment that you're going to review the act.

I think also, when we look at the act as its amended form takes place, there are some areas in which the government has given us some undertaking this morning to provide changes. Clearly, there are some very unsettling aspects to this piece of legislation, things that I think are better described as being on a wing and a prayer in terms of how this is going to unfold for the heritage community.

So for those two reasons—the history of the inability of governments to tackle looking at the Ontario Heritage Act and the rather contentious parts of this bill—it's my view that a minister conducting a review of the act is, frankly, acting in the public good, and I can't imagine why it wouldn't be an appropriate thing to do.

The Vice-Chair: Further debate?

Mr Bisson: Just very quickly, although I support what you're trying to do here, I think in the end there are some issues in this act as far as how it's perceived and received by the public. Generally, this is not a bad piece of legislation, but I think, as you say, from the parliamentary assistant's perspective, some of this stuff is somewhat

complex. It will be interesting to see after five years how this thing has unfolded in the practicality of how it's been administered. I think your suggestion that after five years we do a review is not a bad one.

The Vice-Chair: Mr Racco?

Mr Bisson: Just a last point—sorry, Mr Racco. We all know that governments have good intentions and say, “We’re prepared to look at that, but we’re not going to put it in legislation.” Listen, I’ve been around, like Mr Brown and others, for a long time, and that don’t happen. That’s why you’ve got to put it in legislation.

Mr Racco: I have difficulty with the motion in front of us, only because of the comments that I’ve heard. I tend to believe that reviewing whatever we do, let’s say, every five years is normally within reason. But when the suggestion is that what we are doing is flawed and that’s why we have to do so, it concerns me. I believe the bill is—

Mrs Munro: On a point of order, Mr Chair: I certainly didn’t use the word “flawed,” and that would not be my intention. I did, however, suggest that there are undertakings that are given verbally here by the government and there are issues outstanding within the community. I just want to clarify that for the member.

Mr Racco: I accept the explanation. That was what I concluded, and that’s fair. My concern is that surely there are some changes that need to be done. Anything we do is never perfect. In fact, I have a letter from the town of Markham, which I just saw when I came here today, which says that unfortunately it’s not addressing all the issues. But I believe there are enough issues, even in that letter, that have already been addressed, so I feel comfortable to some degree. That doesn’t mean that changes cannot be made. Nonetheless, the minister has the option to make changes as he or she chooses. It could be done before or after the five-year term. So even if the motion does seem to have some merit, I don’t see it as necessary. I trust the minister will make changes when necessary, prior to or after the five years.

Mrs Munro: I used two reasons for putting this forward for a very specific purpose, in that the history of looking at this particular piece of legislation, quite frankly, isn’t stellar. We know—and I made specific reference to the fact—that governments of all political stripes have tried to tackle this. It’s the history of this bill and the difficulty that previous governments have had in looking at these issues that has prompted me to do this.

I just want to clarify that you’re absolutely right; a minister can review the legislation whenever he or she wishes. We don’t have a good track record of reviewing it, so I’m suggesting that five years is not unreasonable to have a look at it again.

Mr Racco: The Liberals are in power now. Maybe they will take—

The Vice-Chair: Mr Racco, please wait until you are recognized by the Chair. Mr Brownell.

Mr Brownell: This province has not had a good track record. I have to say, we are here today. The justice committee is serious about looking at this legislation,

getting it moving here in the province and listening to the stakeholders. We’ll hear from stakeholders after this; I know I will. I know I’ll hear from my community, as in the letter yesterday. But we have to move forward, we are moving forward, and I’m very excited about that. We’ll get this legislation and then we can add to it.

1150

The Vice-Chair: Any other questions and comments?

Mr Bisson: I’d like to say that I’ve been around here a long time, and I’ve heard that speech before.

The Vice-Chair: You’ll probably never hear it again.

Are we ready to call the question on the proposed amendment? Shall the amendment carry?

Mrs Munro: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost.

Section 44.1: Questions and comments? It’s getting near time to go and vote.

Mr Bisson: We have an amendment to deal with, and maybe we can deal with it in the afternoon. There seems to be some movement on the government side on a particular issue we raised earlier, so it might be a good idea just to come back. We don’t need the whole afternoon to deal with it.

The Vice-Chair: As we would need approval from the House to sit this afternoon—

Mr Bisson: Oh, it wasn’t in the original motion?

The Vice-Chair: Bring your amendment up.

Mr Bisson: Hang on a second. We’re just going to let the House leader’s office person do something.

The Vice-Chair: Go ahead.

I’ll read the amendment and we can debate that after. Section 44.1 of the bill (section 69.1 of the act):

I move that the bill be amended by adding the following section:

“44.1 The act is amended by adding the following section:

“Compensation for maintenance of designated property

“69.1 (1) The minister shall establish a committee to study and prepare a report with respect to mechanisms for compensating owners of properties that are designated under part IV or that are part of a heritage conservation district designated under part V for the costs of maintaining, preserving and restoring their properties.

“Report of committee

“(2) The report of the committee shall make recommendations as to the most effective mechanisms for compensating owners of properties referred to in subsection (1), including providing for relief from

property taxes, for provincial grants or for any other form of relief.

“Consultation

“(3) The committee shall consult with the owners of properties referred to in subsection (1) and with municipalities in preparing its report.

“Timing

“(4) The committee shall prepare the report and submit it to the minister six months after the day the committee is established.”

We’ve got a couple of minutes. I know you’ve heard Mr Marchese on this, and he’s spoken to me about it, and we’ve talked about it within our caucus. I think we know what the arguments are. I’d just be kind of interested to see what my friend Madame Mossop has to say—who’s doing a fine job this morning, by the way. I must say, you’re doing a very good job.

Ms Mossop: I’m on my maiden voyage of shepherding an act through committee, so thank you for that.

There are some concerns in this area as well, but essentially I suppose what we’re looking at with this one—can you just give me one half-second? Sorry.

The Vice-Chair: Further discussion?

Mr Bisson: She’s just checking something.

Ms Mossop: Sorry. I’ve just had to clarify, because I’m trying to juggle something else for the benefit of all.

We understand the issues around this but, again, we’re also trying to move forward realistically. The compensation issue does not have to be a part of the legislation, and can’t be in a realistic way at the moment, anyway, from the standpoint of the government’s financial affairs.

Having said that, we want to work together with all communities and parties affected by this to come up with ways to make this work, and that means coming up with creative ways of finding funding to help them with this. People are open to that process, from what we understand from the people we’ve talked to, and even from what I

heard yesterday. There is an openness to work with us, to be creative about this and find ways of helping. But compensation directly? No. This is a matter of zoning. This isn’t a matter of expropriation or anything of that nature.

Mr Bisson: So what I’m hearing is that in the end, the government will vote against the amendment. There is nothing I can do to change your mind, I take it, at this point. Am I reading you right, Mr Brōwn?

Mr Brown: Yes, you’re right.

Mr Bisson: I made the point. You understand the rationale.

Ms Mossop: Yes, absolutely.

Mr Bisson: Mr Marchese has made the points to me, so we’ll just move to the vote.

The Vice-Chair: Shall the amendment carry?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop.

The Vice-Chair: I declare the amendment lost.

There are no proposed amendments to sections 45, 46 and 47. Shall sections 45, 46 and 47 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 60, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

I declare the committee adjourned.

The committee adjourned at 1156.

CONTENTS

Thursday 2 December 2004

Ontario Heritage Amendment Act, 2004, Bill 60, <i>Mrs Meilleur</i> / Loi de 2004 modifiant la Loi sur le patrimoine de l'Ontario, projet de loi 60, <i>M^{me} Meilleur</i>	JP-413
Mr Dan Schneider, senior policy adviser, Ministry of Culture	
Mr Dana Hall, senior legal counsel, Ministry of Culture	

STANDING COMMITTEE ON JUSTICE POLICY

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Vice-Chair / Vice-Président

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**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Thursday 16 December 2004

**Journal
des débats
(Hansard)**

Jeudi 16 décembre 2004

**Standing committee on
justice policy**

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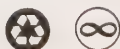
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 16 December 2004

Jeudi 16 décembre 2004

The committee met at 1004 in room 228.

ELECTION OF CHAIR

The Vice-Chair (Mr Bob Delaney): Good morning, honourable members. Welcome to the standing committee on justice policy. It is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Frank Klees (Oak Ridges): I nominate myself.

The Vice-Chair: Mr Klees has nominated himself. Are there any further nominations?

Mr Kevin Daniel Flynn (Oakville): I nominate Mr Qaadri.

The Vice-Chair: Mr Qaadri, do you accept the nomination?

Mr Shafiq Qaadri (Etobicoke North): Yes, I do.

The Vice-Chair: Are there any further nominations?

Mr Peter Kormos (Niagara Centre): I appreciate the dilemma I have as to whether to support Mr Klees, whom I've known for a considerable period of time, or Mr Qaadri, whom I've known now for a year plus.

I must say I have some concerns with respect to Member Qaadri, because I note that he's greying. I know he really has expertise on male menopause. I've heard his concerns about women's menopause and how it can give rise to irrational behaviour. I'm concerned about a Chair who may be in the midst of a menopausal crisis, a Chair who might, like a beacon, be flashing on and off as the heat waves attack him and the sweat accumulates on his forehead, and then the chills that overcome the heat waves. I know it's not appropriate to delve into people's personal lives, but perhaps some assurance that Member Qaadri isn't in menopause, or if he is, that indeed menopause doesn't give rise to the irrational behaviour and outbursts that some mythology has us believe—I really think that should be clarified before we proceed any further. That's not to say we shouldn't be asking the same of Mr Klees, I suppose, if self-identified male menopause is in fact a reality. I've seen Mr Klees have the occasional hot flash, but I'm not sure it has anything to do with hormonal impact.

The Vice-Chair: Thank you.

On the matter of Mr Klees's nomination of himself, pursuant to standing order 115(a), Mr Klees's nomination is out of order.

Mr Kormos: Chair, if I may, I appreciate that nominations, I presume, have been deemed to be closed. I would seek unanimous consent to reopen nominations.

The Vice-Chair: Is there unanimous consent to reopen nominations?

Mr Flynn: I never stand in the way of democracy.

The Vice-Chair: All right.

Mr Kormos: Chair, notwithstanding my concerns that the fix is in, that this is a done deal—talk about myths; the myth of elected Chairs to committees, as compared to some sort of backroom deal that's concocted by, dare I say, perhaps even menopausal men, is in fact daunting.

The Vice-Chair: Do you have a further nomination?

Mr Kormos: Of course I do. There's no rule about how long the nomination can or can't be; I've got 20 minutes. I, in fact, nominate member Frank Klees to serve as Chair. Look, he's entitled to take home some extra money as much as anybody else is. After all, we know that these positions are distributed in such a way that there are precious few people in this assembly—at last count, it was four out of 103—who don't earn a penny in addition to their base stipend. I suspect—

Mr Michael A. Brown (Algoma-Manitoulin): Name names.

Mr Kormos: Well, I did last time. Tony Ruprecht is one of them, and the others have been juggled around. I very rudely refer to them as the losers' club, especially the ones who not only didn't have a perk position but also ended up on the regs committee. In days gone by, that was punishment. If you were not a Chair and also put on the regs committee, you were really in sad shape.

As I say, why shouldn't Mr Klees have a chance to grab the brass ring too: not Cash for Life but a little cash for the session? I nominate Frank Klees, so that this can be an open and, dare I say it in the context of my earlier comments, heated contest.

1010

The Vice-Chair: Our warm feelings of mutual respect for the member from Oak Ridges, for whom I also share a great deal of respect, notwithstanding, pursuant to standing order 115(a), Mr Klees is ineligible to accept the nomination even if proposed.

Are there any further nominations?

Mr Klees: I'd like to speak to this, if I might. I nominated myself and I thank the member from Niagara Centre for nominating me as well. I did so, really, on the basis of ensuring that there is some discussion around

this table and for the purpose of the public record to demonstrate that in this place there are very few surprises and very few times when there really is any evidence of an open debate and a democratic process.

We all know around this table that who the Chair is is predetermined. It has nothing to do with the members of this committee. Frankly I feel as though I'm in one sense doing a disservice to the political process and to democracy because I'm simply here to rubber-stamp a deal that was made, an arrangement that was made about who is going to be the Chair. Mr Qaadri, no doubt, has been put forward by the Premier. Nothing against his qualifications at all, but I want it to be very clear to the public that when this committee nominates a Chair or a Vice-Chair, it has nothing to do with what we as members of this committee think, and that's unfortunate.

You, Mr Chair, were on the campaign trail and you were saying the same things about wanting to bring democracy back into government and the political process. I have yet to see one sliver of evidence that that's happening here.

This government has now been the government for more than a year. There hasn't been a change. If there's anyplace where there might be a change, it might be in a standing committee when members have an opportunity to hear witnesses, deliberate over legislation and bring forward amendments. Not one committee has been able to convince this government to accept an amendment proposed by the public that would improve legislation. I took this opportunity to make that point.

I am hopeful that perhaps Mr Qaadri, in his position as Chair of this committee, will assume the responsibility of Chair and exercise the confidence the Premier has obviously placed in him to appoint him as Chair, take that confidence back to the table with the Premier and convince the Premier that he should begin the work of democratizing this place.

Mr Kormos: In what looks to be very much an acclamation brewing here, I join Mr Klees in my hope that Member Qaadri will be more than just a flash in the pan as Chair of this committee. I know he's a person of good humour; the challenge is to see whether he's a person of good Chair.

The Vice-Chair: Thank you all for your comments. Are there any further nominations?

There being no further nominations, I declare nominations closed and Mr Shafiq Qaadri elected Chair of the committee. Congratulations.

SUBCOMMITTEE MEMBERSHIP

The Chair (Mr Shafiq Qaadri): Thank you, members of the committee, for your vote of confidence, and in particular for your ongoing flashes of insight.

I invite you to move to item 2 on the agenda, revision of the membership on the subcommittee on committee business.

Mr Bob Delaney (Mississauga West): I move that the membership of the subcommittee on committee business be revised as follows: that Mr Qaadri be Chair and appointed in place of Mr Oraziatti.

The Chair: Dispense with comments? Carried. Thank you.

COMMITTEE BUSINESS

The Chair: I now invite you to move to item 3, other business.

There's a letter that's been circulated by our clerk, Mr Koch, from John O'Toole, MPP, Durham. You may read it at your leisure. It's essentially about photo identification and how those individuals who do not have an Ontario driver's licence actually identify themselves with photo ID. I'm instructed or invited by the clerk to have this matter referred to the subcommittee.

Mr Brown: So moved.

The Chair: Agreed?

Mr Klees: First of all, I want to express my appreciation to MPP John O'Toole from Durham for bringing this matter to the committee's attention. It's something that has occurred many times. It's been brought to my attention through my constituents from time to time, and I do believe it is incumbent upon us to address this. I'd like to see this committee—albeit it's going to be up to the subcommittee to make the final determination in terms of how we deal with this.

This has been under discussion for some time, and I really would like to see us move forward and properly investigate this and present the government with some options.

The Chair: Thank you, Mr Klees. Any further comments? Any other business suggested by committee members? There being none, I declare this meeting adjourned.

The committee adjourned at 1018.

CONTENTS

Thursday 16 December 2004

Election of Chair.....	JP-429
Subcommittee membership	JP-430
Committee business	JP-430

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

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Clerk / Greffier

Mr Katch Koch

